

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

CARMINE TRAMUNTI, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX  
Vol. T(37) - Pages 5146 to 5365

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2 UNITED STATES OF AMERICA  
3 vs.  
CARMINE TRAMUNTI, et al.

73 Cr. 1099

New York, March 8, 1974;  
9.45 A.M.

Trial resumed.

- 10 -

(In open court, in the absence of the jury.)

10 THE COURT: Mr. Lopez, I have been informed that  
11 there are some motions to be made now.

12 MR. LOPFZ: Yes, your Honor, some requests.

13                   Your Honor, in the light of Mr. Curran's sum-  
14 mation yesterday, some of the defense counsel have specific  
15 requests. I have three, your Honor.

16 Mr. Curran, during the course of his summation,  
17 indicated in words or substance that shylocking and  
18 narcotic activity went hand in hand.

19 Your Honor will recall that when Mr. Curran  
20 attempted to solicit this information from one of the  
21 witnesses, your Honor sustained an objection to this testi-  
22 mony. I, therefore, think it is fair and I respectfully  
23 request that your Honor charge the jury that the evidence  
24 in this case does not support the contention that shylocking  
25 and narcotics go hand in hand.

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2                   Your Honor, most respectfully, you are talking  
3                   to an expert. If anything, shylocking and narcotics has  
4                   nothing to do with one another. I think the government  
5                   should know that if you have a shylock out on the street  
6                   doing business, he wants to get away from narcotics and  
7                   not even get involved in it. Profits are too high as  
8                   far as shylocking is concerned.

9                   I expect your subpoena soon.

10                  THE COURT: Mr. Lopez, thank you. I was up  
11                  quite late last night, I got up quite early this morning  
12                  and I needed a laugh.

13                  MR. LOPEZ: Two, your Honor, I respectfully  
14                  request that your Honor charge the jury with respect to  
15                  Dawson that it is not for the Court to determine whether  
16                  or not Dawson committed perjury nor to reward him, but it  
17                  is for the jury to pass upon the credibility of each wit-  
18                  ness.

19                  My third request is, your Honor, that I respect-  
20                  fully request that your Honor charge this jury that the  
21                  government alone does not serve the cause of justice, but  
22                  that the Court, defense counsel, the government and the  
23                  jury together serve that cause of justice.

24                  Thank you very much, your Honor.

25                  MR. EPSTEIN: With your Honor's permission, on

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2       behalf of the defendant Tramunti, he makes three additional  
3       supplemental requests at this time in light of the govern-  
4       ment's summation to the jury yesterday.

5               The first supplemental request concerns itself  
6       with the comments made during the course of Mr.Curran's  
7       summation as to the counting of money by the defendant  
8       Tramunti. This record is absolutely devoid of any reference  
9       to the defendant Tramunti at any time, either alone or in  
10      the company of others, counting money, and I request that  
11      your Honor so instruct the jury in the course of your  
12      Honor's charge to the jury.

13               In addition to which, the defendant Tramunti  
14      also requests that your Honor instruct the jury during the  
15      course of this charge that the record is devoid of any  
16      evidence that the defendant Carmine Tramunti even knew  
17      Frank Stasi in 1970 and, further, there is no evidence  
18      that the defendant Carmine Tramunti introduced Frank Stasi  
19      into any illegal activity, be it gambling, be it narcotics,  
20      be it policy, at any time.

21               The third supplemental request is that your  
22      Honor instruct the jury in the course of his charge that  
23      there is nothing in the record to show that Vincent Di Napoli  
24      and Carmine Tramunti were in any way acquainted or knew one  
25      another in February of 1972, at the time of the seizure

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2 of the \$967,000 on Bronxdale Avenue. We further request  
3 the Court instruct the jury that there is no such reference  
4 in the record in view of the Court's rulings during the  
5 course of this trial that all such references to the  
6 presence of Vincent Di Napoli on Bronxdale Avenue on the  
7 night of February 3, 1972, were ordered stricken when the  
8 government sought to introduce such testimony during the  
9 course of its direct case.

10 In addition to which, the defendant Tramunti  
11 would respectfully urge upon the Court that the Court at  
12 this time declare a mistrial and withdraw a juror for the  
13 following reason:

14 Basically, it depends on the last statement by  
15 the government before this jury. Mr. Curran indicated to  
16 this jury that, in effect, every lawyer represents his  
17 client, but the United States Government represents justice  
18 and he stands up there next to the figure of justice and,  
19 in effect, vouches for the credibility of each and every  
20 government witness and what he has done has interposed not  
21 only his own credibility, but the credibility of the entire  
22 federal structure, behind the five key government witnesses  
23 who testified here in court. That is not only highly  
24 prejudicial, it is totally improper.

25 I don't believe at time there can be any remedy

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2 for such action and I think that the only course the Court  
3 could possibly follow even at this late date is to declare  
4 a mistrial and a withdrawal of a juror.

5 That is the request of the defendant Tramunti.

6 THE COURT: All right. The motion is denied.

7 MR. EPSTEIN: Respectfully except.

8 THE COURT: Yes.

9 Yes, Mr. Siegel.

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2 MR. SIECEL: Your Honor, if it may please  
3 the court, yesterday I made a request that Mr. Curran  
4 restate to the jury his mention of Springer in that  
5 during Mr. Curran's summation he indicated that a Mr.  
6 Dawson identified Mr. Springer when he referred to  
7 narcotics he referred to him as being in Springer's  
8 apartment and he also indicated that Springer and Pani-  
9 rello had a conversation about narcotics. Your Honor,  
10 most respectfully, the record is barren of this and I  
11 would ask first a motion for mistrial be granted  
12 or in the alternative that the court instruct the jury  
13 properly as to the facts in this case and to basically  
14 have them disregard Mr. Curran's statement as to refer-  
15 ence to Mr. Springer in those incidents mentioned.

16 Further, your Honor, I would ask for a  
17 limiting instruction as far as an incident mentioned in  
18 Mr. Curran's summation, and that is mentioned at one time  
19 cocaine was snorted at a Hank's apartment. This  
20 was testimony by Mr. Dawson. However, there was no  
21 showing that this Hank was, in fact, the accused who stands  
22 before this court, Mr. John Springer.

23 THE COURT: All right. You join in that  
24 motion for a mistrial which I have to rule on right  
25 away and that motion is denied.

2 Mr. Panzer.

3 Mr. Panzer, your Honor, I raised this earlier.

4 I don't know if your Honor is going to cover it in his  
5 charge, but we have two sections, 173 and 174 and 812,  
6 and I think it is going to become crucial if there  
7 are any convictions, and I hope there are not, under which  
8 section a particular defendant is --

9 THE COURT: It has been taken care of.

10 MR. RICHMAN: Your Honor, I just wanted  
11 to mention in marshaling the evidence I would like you  
12 to call to the attention of the jury an error Mr. Curran  
13 did make in his summation. I believe it was an in-  
14 advertent error and I would like your Honor to call  
15 attention to it.16 Nowhere in the cross examination of Benjamin  
17 Tolopka did it say he went to Fair Motors. It said  
18 in fact that he went to see Mr. Fair of Fair Motors who  
19 sold cars at P & J Motor lot in the cross examination.  
20 This is evidence in the cross examination, your Honor.21 Fair Motors, by the way, your Honor, is in  
22 Mt. Vernon, New York.

23 THE COURT: All right.

24 MR. ELLIS: Your Honor, I, of course, join  
25 in all previous motions for a mistrial.

2 THE COURT: Yes. Everybody does. This  
3 is a perfect time to join motions for a mistrial.  
4 Go ahead.

5 MR. ELLIS: In view of Mr. Curran's emphasis  
6 on the testimony that Burke was a customer of Mamone's,  
7 I would ask your Honor to charge that there is no  
8 charge in this record, in this indictment and no evidence  
9 in this record, that Mamone sold narcotics to Burke within  
10 the period of the indictment or at any other time.

11 I would also ask the court to charge there  
12 is no evidence in this record that Mamone moved in the  
13 highest circles of a narcotics conspiracy and I would  
14 ask your Honor to charge as a matter of law that Stasi  
15 did not corroborate Barnaba with respect to any of the  
16 incidents that Barnaba testified involving Mamone.

17 THE COURT: All right. Yes, Mr. Fisher?

18 Wait a second, let us not pass Mr. Ellis.

19 Mr. Ellis, you introduced a movinh van business  
20 record as to the date of the movement.

21 MR. ELLIS: Yes, your Honor.

22 THE COURT: You fellows are going to be  
23 terribly bored with me at the end of this day, but as  
24 I said to you, I believe that the only way to treat the  
25 evidence if you are going to marshal it is treat it all,

2 including cross examination and everything else.

3           But I unfortunately do not have that date  
4 and did not have the exhibit.

5           MR. ELLIS: May 25, 1973.

6           MR. RICHMAN: Does your Honor wish the exhi-  
7 bits?

8           THE COURT: No, I have yours.

9           MR. FISHER: If your Honor please, in view  
10 of the very last statements by Mr. Curran, I would ask  
11 the court to charge the jury in substance that Mr.  
12 Curran is nothing less nor anything more than a lawyer  
13 in this case and that his client is nothing more nor  
14 anything less than a client.

15           THE COURT: All right.

16           Yes, Mr. Lopez.

17           MR. LOPEZ: Just one housekeeping detail.

18           For the record, I notice all the defendants  
19 are here. However, there is one attorney that is not  
20 here, Mr. Rosenbaum. His client, who is here in court,  
21 specifically requested his presence here, said he had  
22 a motion to make and no arrangements were made for Mr.  
23 Rosenbaum to be covered, nor do we believe, your Honor,  
24 should anyone cover any other attorney's responsibility,  
25 so we are concerned with that.

2 THE COURT: I am a little concerned too.  
3 I am glad you pointed it out to me. Use the phone  
4 right here to call him up.

5 MR. PANZER: Your Honor, while we are wait-  
6 ing for Mr. Rosenbaum --

7 THE COURT: Wait just a minute.

8 All right, go ahead, Mr. Panzer.

9 MR. PANZER: Can we get a little idea  
10 what your Honor's intentions are going to be as far as  
11 the jury, how long you are going to hold them tonight  
12 and what the plans are for tomorrow, so I can set up  
13 some sort of schedule as to what I am going to be doing  
14 tomorrow.

15 THE COURT: Yes. Let me see what happens.  
16 I will let you know after I finish the charge.

17 Those spectators who are in the courtroom,  
18 I am going to warn you right now, this is going to be  
19 a very long charge. Unless you are willing to sit  
20 through the entire thing, leave before the charge starts.  
21 I am going to have the door barred. Nobody is going  
22 to come in and no one is going to go out.

23 We will be taking certain breaks. We  
24 know Mr. Rosenberg has problems with his cigarette habit.  
25 But I do want to warn you all that once you are in, you

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2 are going to stay in.

3 (Recess.)

t2a-jha 4 (In open court; jury not present.)

5 THE COURT: Mr. Rosenbaum, I understand  
6 that you also have a motion to make.

7 MR. ROSENBAUM: Your Honor, with reference  
8 to one statement made by Mr. Curran, that Mr. Finn's testi-  
9 mony corroborated that of Mr. Stasi, that is contrary  
10 to the evidence submitted before this court in every aspect  
11 and I started to make that statement yesterday -- both  
12 as to the date that Mr. D'Amico had lived in the apart-  
13 ment, the date that the name went on the doorbell,  
14 whether or not Mr. D'Amico lived in the apartment during  
15 the months of November, December and January of 1973,  
16 and there was absolutely no such testimony by Mr. Stasi  
17 or Mr. Finn. In that respect I request that that  
18 correction be made.

19 THE COURT: Gentlemen, I worked long and  
20 hard at trying to be extremely fair in the marshaling  
21 of the evidence. I am granting you all immediately  
22 now an exception to my marshaling of the evidence  
23 because I know that no matter how I did it you would  
24 find something objectionable in it.

25 All right, are we all set? All right, bring in  
the jury, please.

(Jury present.)

CHARGE OF THE COURT

(Duffy, J.)

THE COURT: Good morning, ladies and gentlemen.

Ladies and gentlemen, now that the testimony is over and the arguments are over the time has come for you and me to do our part in the administration of justice in this case. Counsel for the government, counsel for the defendants, have been seeking to guide us in our job to do justice in this case.

Now it is my province to instruct you as to the law and you must accept my instructions on that. It is your function to determine the facts and your decision on the facts is final and conclusive.

In considering the evidence and determining the facts in this case you must lay aside any questions or considerations of sympathy. It is your duty as well as mine to administer justice fairly and impartially. In so doing we must be guided solely by the law and the evidence and neither you nor I can permit our conclusions to be affected by sympathy or suspicion.

You are to discharge your duty in an attitude of complete fairness and impartiality and, as I emphasized when you were selected as jurors, without bias or

2 prejudice for or against the government or the defendants as parties to this controversy.

3  
4 The case is important to the government since  
5 the enforcement of criminal laws is a matter of prime  
6 concern to the community. Equally, it is important  
7 to each defendant who is charged with a serious crime.

8 Before I turn to the indictment with which  
9 we are concerned here there are a few general observa-  
10 tions I would like to make.

11 I instructed you at the very start of this  
12 trial that your important function during the progress  
13 of the taking of testimony would be to listen carefully  
14 to each witness as he testified, also to observe him,  
15 and it has been evident to me, as it has been to counsel,  
16 that you have followed those instructions. And so  
17 you are prepared to undertake your final duty and in  
18 the discharge of that final duty you perform a very high  
19 duty of citizenship -- that is, you are acting as ministers  
20 of justice.

21 You members of the jury are the sole and  
22 exclusive judges of the facts. You pass on the weight  
23 of the evidence; you determine the credibility of the  
24 witnesses; you resolve such differences as there may  
25 be in the testimony, and you, members of the jury, draw

2 whatever reasonable inference is warranted by the facts  
3 as you determine them.

4 It is your recollection of the facts that  
5 governs. Should that recollection of the facts differ  
6 from that of the lawyers or from mine, please disregard  
7 anything that we have said as far as the facts are con-  
8 cerned.

9 If you want to have any of the testimony  
10 of any part of the case read back to you that will be  
11 done at your request.

12 Of course, you will consider only the facts  
13 which have been developed at this trial. You are not  
14 to be influenced by anything that you have read about  
15 criminal cases or anything that you have heard about them  
16 on the radio or seen on television. It is only what  
17 you heard here that counts.

18 At times during the trial I have been called  
19 upon to make rulings on various matters of law. I  
20 have sustained objections, I have overruled objections.  
21 Please do not concern yourself with my reasons for so  
22 doing. These are purely legal matters.

23 From time to time conferences at the bench  
24 were conducted during the trial at the request of  
25 the attorneys or at my request. These conferences

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2 were solely on questions of law or logistics and are of  
3 no concern to you. You are not to draw any infer-  
4 ence for or against either side because of requests for  
5 such conferences.

6 If during the trial I have said anything or  
7 indicated anything in my questions or in my rulings  
8 which may lead you to believe that I am inclined to  
9 favor one side or the other, please disregard it. Any  
10 questions of mine, any rulings, were purely for  
11 clarification.

12 You have heard the summations of counsel.  
13 If you believe that any counsel stated something as to  
14 which there is no evidence, disregard that part of what  
15 he said. Remember, statements of counsel are not evi-  
16 dence. They are arguments by advocates, not evidence.  
17 Questions are not evidence.

18 If any answer came from a witness and was  
19 stricken by me, you are not to consider that as evidence.  
20 The evidence is the answers of the witnesses as you re-  
21 call them, the testimony they gave, and the exhibits which  
22 were received in evidence.

23 Similarly, you are to treat stipulations of  
24 the parties to be real evidence for both sides have agreed  
25 to the truth of these facts.

2 Some stipulations, however, were not as to  
3 the truth of facts but rather what a witness would have  
4 testified if he had been called. In the latter  
5 situation it is a question for you ladies and gentlemen  
6 of the jury to decide whether or not the stipulated  
7 testimony was truthful and believable, using the same  
8 tests and standards that you apply to all other testimony  
9 and you are to give it the weight which you determine  
10 it should have.

11 You have heard the testimony here. How  
12 do you determine what weight you will give it? How  
13 do you determine whether you are going to believe it  
14 or not?

15 You have heard it said that you should use  
16 your plain, everyday common sense. That you should  
17 do. You saw the witnesses. How did their testi-  
18 mony impress you? Did they appear to be testifying  
19 honestly and frankly?

20 In evaluating their testimony and their  
21 credibility you will apply your own common sense and  
22 experience, just as you would in determining an important  
23 matter in your own lives, when you decide whether or not  
24 you have been given a true picture of a situation.  
25 You may consider the witness' demeanor, his or her

2 lack of candor, his or her ability to express himself, his  
3 or her possible bias, his or her strength of recollec-  
4 tion, their accuracy of recollection.

5 If you believe that a witness has been  
6 convicted of a crime or done any immoral or discreditable  
7 act, then you may take that into account in determining  
8 the credibility of the witnesses, and you may give it  
9 such weight as you think it deserves.

10 You may also consider whether the witness has  
11 a possible interest in the outcome of the case. This  
12 does not mean that a witness necessarily will testify  
13 falsely because he or she has an interest. It is merely  
14 a factor which you should consider.

15 The police and the narcotics agents might be  
16 said to have an interest in this case. It is a case  
17 that they investigated and presented. You may consider  
18 that and give it what weight you feel it deserves. The  
19 fact that a witness is an employee of the government  
20 does not mean that you should give greater or lesser  
21 credit to his testimony. His testimony should be  
22 scrutinized in the same manner as that of any other  
23 witness.

24 I charge you that the government here must  
25 be considered in no different light than any other party

2 to a lawsuit and counsel for the government must be con-  
3 sidered in no different light than counsel for the defen-  
4 ant or any other litigant. The fact that the govern-  
5 ment is a party entitles it to no greater or lesser  
6 consideration than accorded to any other party to a  
7 lawsuit.

8 The defendants who testified also have an  
9 interest in this case. That interest is apparent.  
10 You may consider that interest in determining the weight  
11 which you want to give their testimony.

12 Certain of the witnesses who testified at this  
13 trial said in their testimony that they were accomplices  
14 in the crimes charged against some of the defendants on  
15 trial. The testimony of these witnesses is to be  
16 weighed with caution and care.

17 An accomplice's testimony implicating a de-  
18 fendant as a perpetrator of a crime is inherently suspect  
19 for such a witness may well have an important personal  
20 stake in the outcome of the trial. An accomplice so  
21 testifying may believe that the defendant's acquittal  
22 could vitiate some expected reward that may have been  
23 either explicitly or implicitly promised him in return  
24 for his plea of guilty and his testimony.

25 In the prosecution of crime the government must

2 often use witnesses who are accomplices, but the fact  
3 that these witnesses are accomplices is not in and of  
4 itself reason to reject totally their testimony. Weigh  
5 their testimony carefully and with caution, then accept  
6 or reject that which you feel is believable or un-  
7 believable.

8 You should also consider whether the wit-  
9 ness' testimony is supported or whether it is contradicted  
10 by other credible testimony.

11 If you find that a witness has made a material  
12 misstatement with the intention of misleading you may  
13 disregard that part of the witness' testimony or you  
14 disregard it all if you do not believe it, or you may  
15 accept that part which you believe and find to be re-  
16 liable and disregard the rest.

17 All these things you should consider in  
18 judging credibility, believability, and in determining  
19 where the truth lies.

20 In considering the evidence it is the quality  
21 of the evidence that counts, it is not the number of exhi-  
22 bits.

23 You may hear me sometimes refer to direct  
24 evidence or circumstantial evidence. It may be well  
25 for me to explain right now the difference between the

2 two.

3 Direct evidence is where a witness testified  
4 as to what he saw, heard or observed, what he knows  
5 of his own knowledge, something which comes to him by  
6 virtue of other senses directly.

7 Circumstantial evidence is evidence of facts  
8 and circumstances from which one may infer connected  
9 facts which reasonably follow in the common experience  
10 of mankind.

11 Stated somewhat differently, circumstantial  
12 evidence is evidence which tends to prove a disputed  
13 fact by proof of other facts which have a logical  
14 tendency to lead the mind to the conclusion that the dis-  
15 pleted fact has been established.

16 Circumstantial evidence, if believed, is of  
17 no less value than direct evidence, for in either case you  
18 must be convinced beyond a reasonable doubt of the  
19 guilt of any defendant.

20 Let me take an example to show you what I mean  
21 by circumstantial evidence. Let's assume that when  
22 you entered the courthouse this morning the sun was  
23 shining brightly and it was a clear day. Now assume  
24 that you can't see outside and that you are sitting in  
25 the jury box all day, despite the fact that it was

2 dry when you entered the building, someone walks in  
3 with an umbrella that is dripping wet and a little later  
4 somebody walks in with a raincoat that is dripping wet.

5 Now, you cannot look out of the courtroom in  
6 this example I suggest, you can't see whether it is rain-  
7 ing or not. If you were asked if it was raining  
8 you can't say that you know it directly by your own ob-  
9 servation, but certainly on the combination of facts given  
10 to you, even though when you entered the building it  
11 was not raining, it would be reasonable and logical  
12 for you to conclude that it is now raining, and that is  
13 all there is to circumstantial evidence. You infer  
14 on the basis of reason and experience from established  
15 facts the existence of some other fact.

16 Before we consider the precise charge against  
17 each defendant on trial some other preliminary matters  
18 should be noted.

19 The indictment returned by the grand jury con-  
20 tains two separate types of charges or counts. The  
21 first count, the conspiracy count, charges that all of  
22 the defendants and others conspired to violate the  
23 federal narcotics laws which prohibit the unlawful importa-  
24 tion of heroin and cocaine into the United States and  
25 also prohibit the distribution of heroin or cocaine or

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2 their possession with intent to distribute.

3 The other counts to which I will hereafter  
4 refer to as the substantive counts charge particular  
5 defendants with an actual violation of that part of the  
6 law which makes it unlawful for one to distribute or to  
7 possess a narcotic drug with intent to distribute.

8                    Certain counts of the indictment have been  
9                    severed and are not tried before you.    Certain defend-  
10                  ants named in the indictment have also been severed and  
11                  are not tried before you.    You are not to concern  
12                  yourselves with the reasons for such severances.    The  
13                  reasons are many and varied.    Do not try to speculate  
14                  on those reasons.    You will have enough to do without  
15                  speculation about that.

16                    Certain persons who the government alleges  
17                    were also engaged in criminal activity with the defendants  
18                    were not accused in this case as defendants but only  
19                    named as co-conspirators.      That is not to enter into  
20                    your deliberations except in so far as it may be a  
21                    question that may be considered on the question of credi-  
22                    bility.      Whether persons who may be involved with  
23                    others in alleged criminal conduct should be indicted  
24                    is a matter within the sole discretion of the United  
25                    States attorney and the grand jury.

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2 No adverse inference may be drawn either  
3 against the defendant or the government because persons  
4 are included or omitted from an indictment.

9 The charges against him or her stand or fall  
10 on the proof or lack of proof against him or her and not  
11 as to proof against other defendants or co-conspira-  
12 tors.

13                   There are certain principles of law which  
14                   apply in every criminal case and to which I made  
15                   reference and emphasized at the time of your selection  
16                   as jurors.     I repeat them now.

22 They each pleaded not guilty. Thus the  
23 government has the burden of proving the charges against  
24 each of them beyond a reasonable doubt.

25 A defendant does not have to prove his innocence.

2 On the contrary, he is presumed to be innocent of the  
3 accusations contained in the indictment. The pre-  
4 sumption of innocence was in his favor at the start  
5 of the trial, continued in his favor throughout the  
6 entire trial, is in his favor even as I instruct you  
7 now, and remains in his favor during the course of your  
8 deliberations in the jury room. In other words, the  
9 law presumes that a defendant who has pleaded not  
10 guilty to be innocent of the crime with which he is  
11 charged. Thus, the defendant, although accused, begins  
12 the trial with a clean slate, with no evidence against  
13 him. Accordingly, the government, having made the  
14 charge, must prove it beyond a reasonable doubt. This  
15 burden of proof never shifts. It remains upon the gove-  
16 ment throughout the trial.

17 A defendant in a criminal case is not required  
18 or called upon to prove his innocence. Since the  
19 burden is upon the government to prove the accused guilty  
20 beyond a reasonable doubt of every essential element of  
21 the crime charged, the defendant has the right to rely upon  
22 the failure of the prosecution to establish such proof.

23 A defendant may also rely upon evidence brought  
24 out on cross examination of the government's witnesses.  
25 The law does not impose upon a defendant the duty of  
producing any witnesses.

2B 2 Some defendants have taken the stand and also  
3 produced witnesses, other defendants have not. There are  
4 many reasons why a defendant may decide not to testify.  
5 He may feel that because of the strain and tension he may  
6 not be a calm witness. He may be embarrassed by his lack  
7 of education or his inability to speak well in front of a  
8 group of people.

9 You should not speculate as to why any of the  
10 defendants did or did not testify. You may not draw any  
11 inference whatsoever from anyone's failure to take the  
12 stand.

13 I remind you once more that any defendant may  
14 rely on the presumption of innocence and need do nothing  
15 more. The presumption of innocence to which I have referred  
16 is removed only if and when you are satisfied that the  
17 government has sustained its burden of proving the guilt  
18 of the defendant beyond a reasonable doubt.

19 The question that naturally comes up is what is  
20 a reasonable doubt. The words almost define themselves.  
21 That there is a doubt founded in reason and arising out of  
22 the evidence in the case or the lack of evidence.

23 It is a doubt which a reasonable person has  
24 after carefully weighing all the evidence. Reasonable  
25 doubt is a doubt which appeals to your reason, your judgment,

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2 your common sense and your experience.

3 It is not caprice, whim, speculation, conjecture  
4 or suspicion. It is not an excuse to avoid the performance  
5 of an unpleasant duty. It is not sympathy.

6 If after a fair and impartial consideration of  
7 all the evidence you can candidly and honestly say that  
8 you are not satisfied of the guilt of a defendant, that  
9 you do not have an abiding conviction of the defendant's  
10 guilt which amounts to a moral certainty, if you have such  
11 a doubt as would cause you as a prudent person to hesitate  
12 before acting in matters of importance to yourself, then  
13 you have a reasonable doubt, and in that circumstance it is  
14 your duty to acquit.

15 On the other hand, after such an impartial and  
16 fair consideration of all the evidence if you can candidly  
17 and honestly say that you do have an abiding conviction of  
18 the defendant's guilt, such a conviction that you would be  
19 willing to act upon in important and weighty matters in  
20 the personal affairs of your own life, then you have no  
21 reasonable doubt, and under such circumstance it is your  
22 duty to convict.

23 One final word on this subject. Proof beyond  
24 a reasonable doubt does not mean proof to a positive  
25 certainty or beyond all possible doubt. If that were the

2 rule few persons, however guilty they may be, would ever be  
3 convicted. It is practically impossible for a person to be  
4 absolutely and completely convinced of any controverted  
5 fact which by its nature is not susceptible to a mathematical  
6 certainty.

7 As a consequence, the law in a criminal case is  
8 that it is sufficient if the guilt of the defendant is  
9 established beyond a reasonable doubt, not beyond all  
10 possible doubt.

11 Now, in our federal system there are no crimes  
12 except as they are defined or created by statute or laws  
13 written by Congress. And so in this case, as in all  
14 others, the charges, the accusations against these defend-  
15 ants, are made under certain federal laws passed by the  
16 Congress.

17 It is not going to be necessary for you to know  
18 exactly the words of any of these laws. Nevertheless, I  
19 think it will help as a background for your later under-  
20 standing to give you a basic description of the laws that  
21 are involved in this case. And there is a small complica-  
22 tion that has to do with time because of the change in the  
23 law about which I will also tell you.

24 Because of the period that concerns us, extending  
25 overall from 1969 to 1973, we are concerned basically with

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2 two federal laws, one that was in force for some years,  
3 ending May 1, 1971, and then another, which replaced that  
4 earlier law and became effective on May 1, 1971.

5 As I will indicate to you, this is, in the end,  
6 much less complicated than it starts out sounding.  
7 Nevertheless, I am going to give you this background so  
8 that some of the things I say later and some of the things  
9 I will read from the indictment will perhaps make more  
10 sense to you.

11 The relevant federal narcotics laws in effect in  
12 1969, 1970 and up to May 1, 1971, were Section 173 and  
13 Section 174 of Title 21, United States Code. Section 174  
14 provides in part:

15 "Whoever fraudulently or knowingly imports  
16 or brings any narcotic drug into the United States  
17 contrary to law, or receives, conceals, buys, sells,  
18 or in any manner facilitates the transportation, con-  
19 cealment or sale of any such narcotic drug after being  
20 imported or brought in, knowing the same to have been  
21 imported or brought into the United States contrary to law,  
22 or conspires to commit any of such acts in violation of the  
23 laws of the United States" shall be punished as provided  
24 in law.

25 Section 173 provides in part:

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2                    "It is unlawful to import or bring any narcotic  
3                    drug into the United States except such amounts as  
4                    the Commissioner of Narcotics finds to be necessary  
5                    to provide for medical and legitimate uses."

6                    As you will see soon, the conspiracy charge in  
7                    this case and certain of the substantive counts relate to  
8                    alleged violations of that statute.

9                    Now then, effective May 1, 1971, these provisions  
10                  were replaced by another statute now contained in other  
11                  sections of Title 21 of the United States Code. As I  
12                  read the indictment to you you will hear me refer to Sections  
13                  812, 841, and so on, of that title of the code.

14                  Now, these provisions effective May 1, 1971,  
15                  forbid the distribution or the possession of with intent  
16                  to distribute certain kinds of narcotic drugs in schedules  
17                  of so-called controlled substances. Heroin is among those,  
18                  and it is in Schedule I. Cocaine is among those, and  
19                  it is in Schedule II.

20                  Very simply described, these provisions make it  
21                  unlawful for any person knowingly or intentionally to dis-  
22                  tribute or possess with intent to distribute any con-  
23                  trolled substance, such as heroin or cocaine.

24                  Now, under the law both before May 1, 1971,  
25                  and after that date it has been a crime to conspire to

2 violate either of these provisions.

3                   With that statutory framework in mind, let me  
4 again outline and then go specifically to the charges of  
5 the indictment.

6                   Count 1, as I said, charges a conspiracy during  
7 the period 1969 to 1973. It charges that the conspiracy  
8 had as objects violation of both the old statute preceding  
9 May 1, 1971, and the new statute following May 1, 1971.

10                  Counts 3 through 8 and Counts 11 through 14  
11 allege substantive crimes, unlawful possession, prior to  
12 May 1, 1971. That is alleged under the old law which  
13 was in effect when the crimes charged in those counts were  
14 allegedly committed and, as I said, up to May 1, 1971.

15                  Counts 16 through 21, 23 through 26 and Count 23  
16 charge violations after May 1, 1971, and those substantive  
17 charges are under the new provisions of Title 21 that I  
18 mentioned to you.

19                  With respect to Count 1, the conspiracy count,  
20 one object of this alleged conspiracy was the violation of  
21 the statute in effect until May 1, 1971, that is, an object  
22 of the conspiracy to violate the law prohibiting anyone  
23 from receiving, concealing, selling or in any way facilitat-  
24 ing the transportation, concealment or sale of narcotics  
25 knowing that the narcotic had been illegally imported into

1 hp7

2 the United States.

3           Then the indictment charges a second object of  
4 the conspiracy, and this would relate to the period after  
5 May 1, 1971, was to violate the present statute, the one  
6 that forbids the distribution or possession with intent  
7 to distribute Schedule I or Schedule II narcotic drug  
8 controlled substances, and that is, of course, heroin and  
9 cocaine.

10           I have told you that in our system violations of  
11 the criminal law must be put in terms of a duly enacted  
12 statute and so I have addressed your attention to the  
13 statutes which underlie the time periods of the conspiracy  
14 charged in the indictment.

15           At the same time I think it is fair to say that  
16 both before and after May 1, 1971, the basic wrong alleged  
17 in this case was the unauthorized sale or transfer of  
18 dangerous drugs, such as heroin and cocaine, and the basic  
19 nature you must find of the conspiracy alleged in this case  
20 throughout that period was a conspiracy to engage in the  
21 sale and distribution of such narcotic drugs.

22           Don't worry about the difference between the  
23 conspiracy and each of the substantive counts. Each charges  
24 a different crime. I have already mentioned that Count 1  
25 charges a conspiracy to violate the federal narcotics laws,

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2 whereas the other counts, the substantive counts, charge  
3 that particular defendants committed actual violations of  
4 those laws.

5 A conspiracy to commit a crime is an entirely  
6 separate and different crime from the substantive crime  
7 which may be the object of the conspiracy. The essence  
8 of the crime of conspiracy is an agreement or understanding  
9 to violate law. Thus if a conspiracy exists, even if it  
10 should fail in its purpose, it is still punishable as a  
11 crime.

12 Congress has made a conspiracy or concerted  
13 action to violate a federal law a crime entirely separate,  
14 distinct and different from the violation of the law or  
15 laws which may be the object of the conspiracy.

16 Against this background of the applicable statute  
17 we turn to a consideration of the specific counts of the  
18 indictment. Since the essential elements which the  
19 government must prove in order to sustain the respective  
20 charges in the conspiracy count are different from those  
21 required of each substantive count, we shall consider these  
22 requirements separately.

23 Now, the 1st count of the indictment charges:  
24 "From on or about the 1st day of January,  
25 1969, and continuously thereafter up to and includin

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2 the date of the filing of this indictment, in the  
3 Southern District of New York, Carmine Tramunti,  
4 Louis Inglese, also known as Gigi, Joseph Delvecchi  
5 also known as Joe Crow, Donato Christiano, also  
6 known as Finnegan, Thomas Lentini, also known as  
7 Moe, Angelo Marone, also known as Butch, Joseph Di  
8 Napoli, Carmine Fugliese, Pat Dilacio, Frank Puglies  
9 also known as Butch, Joseph Ceriale, also known as  
10 Joe Red, John Gamba, also known as Sinatra, Anthony  
11 Loria, Vincent D'Amico, also known as Vincent Rizzo,  
12 Dominick Lessa, Benjamin Tolopka, George Toutoian,  
13 Frank Pellegrino, also known as Swifty, Joseph  
14 Marchese, also known as Joe Cab, Richard Forbrick,  
15 Frank Russo, Warren C. Robinson, also known as Alan,  
16 Thomas Dawson, also known as Tennessee, Al Greene,  
17 William Alonzo, also known as Butch Ware, Hattie  
18 Ware, John Springer, also known as Hank, Mary Jane  
19 Salviani, also known as Liz, Henry Salley, Basil  
20 Hansen, Estelle Hansen and John Doe, also known as  
21 Jimmy Wyatt Earp, the defendants, and others to the  
22 grand jury known and unknown, unlawfully, wilfully,  
23 intentionally and knowingly combined, conspired,  
24 confederated and agreed together and with each other  
25 to violate Sections 173, 174, 812, 841(a)(1) and

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2 841(b)(1)(A) of Title 21, United States Code.

3 "2. It was part of said conspiracy that the  
4 said defendants unlawfully, wilfully and knowingly  
5 would receive, conceal, buy, sell and facilitate the  
6 transportation, concealment and sale of a quantity  
7 of narcotic drugs, the exact amount thereof being  
8 to the Grand Jury unknown, after the said narcotic  
9 drugs had been imported and brought into the United  
10 States contrary to law, knowing that the said narcotic  
11 drugs had been imported and brought into the United  
12 States contrary to law in violation of Sections 173  
13 and 174 of Title 21, United States Code.

14 "It was a further part of the said conspiracy" --  
15 this is Paragraph 3 -- "It was a further part of the  
16 said conspiracy that the said defendants and co-  
17 conspirators unlawfully, wilfully, intentionally and  
18 knowingly would distribute and possess with intent  
19 to distribute Schedule I and II narcotic drug  
20 controlled substances, the exact amount thereof being  
21 to the Grand Jury unknown, in violation of Sections  
22 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United  
23 States Code."

24

25

3A

2                    In order to convict a defendant on trial, the  
3                    government must prove beyond a reasonable doubt the follow  
4                    essential elements:

5                    1. The existence of the conspiracy charged  
6                    in the indictment.

7                    2. That the defendant knowingly joined himself  
8                    with the conspiracy with the intent to further its purpose

9                    3. That one of the conspirators knowingly  
10                   committed at least one of the overt acts set forth in the  
11                   indictment at or about the time and place alleged.

12                   Let us consider what is a conspiracy.

13                   The idea of a conspiracy is simple. A conspiracy is a  
14                   combination, agreement or understanding of two or more  
15                   persons by concerted action to accomplish a criminal or  
16                   unlawful purpose, in this instance to import into the  
17                   United States or to distribute or possess with intent to  
18                   distribute narcotic drugs.

19                   The gist of the crime is the unlawful combination  
20                   or agreement to violate the law. The success or failure  
21                   of the conspiracy is immaterial to the question of the guilt  
22                   or innocence of a conspirator. However, in this case,  
23                   the government contends that at least in part the conspiracy  
24                   succeeded. However, as I said, the success or failure of  
25                   the conspiracy is immaterial on the question of guilt or

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2 innocence.

3 To establish a conspiracy, the government is not  
4 required to show that two or more persons sat around the  
5 table and entered into a solemn pact, orally or in writing,  
6 stating that they were forming a conspiracy to violate the  
7 law or the details or the means by which the objective was  
8 to be achieved.

9 Common sense will tell you that when persons  
10 in fact undertake to enter into a criminal conspiracy,  
11 much is left to unexpressed understanding.

12 But the evidence must show in order to establish  
13 that a conspiracy existed that its members in some way or  
14 manner through any contrivance, impliedly or tacitly, came  
15 to a common understanding to violate the law or to accomplish  
16 an unlawful plan.

17 In determining whether there has been an unlawful  
18 agreement, you may judge acts and conduct of the alleged  
19 co-conspirators which are done to carry out an apparent  
20 criminal purpose. The adage, "Actions speak louder than  
21 words," is applicable here. Usually the only evidence  
22 available is that of disconnected acts and conduct on the  
23 part of the alleged individual conspirators, which acts and  
24 conduct, however, when taken together in connection with  
25 each other and considered as a whole permit an inference

2 that a conspiracy existed as conclusively as direct proof.  
3 But the acts of the alleged conspirators must show their  
4 fundamental agreement to violate the law.

5 Items of evidence are not to be viewed in  
6 isolation but in conjunction with one another and upon  
7 the totality of all the evidence.

8 A conspiracy has sometimes been called a partnership  
9 in criminal purposes, and as to the partnership, each  
10 member becomes the agent of the other.

11 To become a member of the conspiracy, a defendant  
12 need not know each and every other member nor of the  
13 participation of the other members nor all the details of  
14 the conspiracy. For example, there is no proof that certain  
15 defendants knew or even met other defendants or alleged  
16 co-conspirators. Each member of the conspiracy may perform  
17 separate and distinct acts at different times and at different  
18 places. Some conspirators may play major roles  
19 while others play minor parts.

20 Thus, the guilt of a conspirator is not governed  
21 by the extent, duration or whether he played a greater or  
22 lesser role in the conspiracy.

23 Even if one joined a conspiracy after it was  
24 formed and engaged in it to a degree more limited than  
25 that of most other conspirators, he is equally culpable as

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2 long as he was a co-conspirator.

3                   In other words, it is not required that a person  
4 be a member of the conspiracy from its very start. He may  
5 join it at any point during its progress and be held  
6 responsible for all that has been done before he joined and  
7 all that may be done thereafter during its existence and  
8 while he remains a member.

9                   A conspiracy, which once formed, is presumed to  
10 continue until its objectives are accomplished or there is  
11 an affirmative act of termination by its members or is  
12 otherwise terminated as, for example, by police inter-  
13 vention.

14                   So, too, once a person is found to be a member  
15 of the conspiracy, he is presumed to continue in its  
16 membership until its termination or unless there is proof  
17 of his withdrawal or disassociation.

18                   You must first determine whether the proof  
19 establishes the existence of the conspiracy as charged in  
20 the indictment.

21                   In deciding this first element, you must consider  
22 all the evidence which has been admitted with respect to the  
23 conduct, acts and declarations of each alleged co-conspirator,  
24 and such inferences as may be reasonably drawn therefrom.

25                   It is sufficient to establish the existence of

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2 the conspiracy if, from the proof of all the relevant fact  
3 and circumstances, you find beyond a reasonable doubt that  
4 the minds of at least two alleged co-conspirators met in  
5 an understanding way to accomplish by the means alleged  
6 one or more of the objectives of the conspiracy as charged  
7 in the indictment.

8 If you do conclude that the charged conspiracy  
9 did exist, you next determine whether each defendant was a  
10 member.

11 As I said, guilt is personal and you must consider  
12 each defendant separately. His participation in the con-  
13 spiracy, if you find one did exist, must be established by  
14 the independent evidence of each defendant's own acts,  
15 statements and conduct as well as those of his alleged  
16 co-conspirators and the reasonable inferences to be drawn  
17 therefrom.

18 If you find that a particular defendant was a  
19 member, you must be satisfied beyond a reasonable doubt that  
20 aware of its purpose, the particular defendant was a willing  
21 participant with the intent to advance the purposes of the  
22 conspiracy.

23 If you do so find, then however limited his role  
24 in furthering the objectives of the conspiracy, he is  
25 responsible for all that was done in furtherance thereof

2 either before or during his membership at least during the  
3 continuance of the conspiracy.

4 Once you are satisfied beyond a reasonable doubt  
5 that a conspiracy existed and that a particular defendant  
6 was a member, then the acts and declarations of any other  
7 person whom you also find was a member of the conspiracy,  
8 made by such conspirator during its existence and in  
9 furtherance of its objects, are considered the acts and  
10 declarations of all other members of the conspiracy even  
11 though they were not present.

12 Now, I told you about taking evidence subject to  
13 connection. I told you I was going to explain it in detail  
14 later. This is what I meant:

15 Let me repeat that explanation. Once you are  
16 satisfied beyond a reasonable doubt that a conspiracy  
17 existed and that a particular defendant was a member, then  
18 the acts and declarations of any other person whom you also  
19 find was a member of the conspiracy made by such co-  
20 conspirator during the existence of the conspiracy and in  
21 furtherance of its objects, are considered the acts and  
22 declarations of all of the members of the conspiracy even  
23 though they were not present.

24 For example, assume that you find that a conspirac-  
25 as charged existed, of which a particular defendant and

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2 others were members. Then any acts, statement or conduct  
3 of any one of them in furtherance of the conspiracy and  
4 during its existence would be binding upon that particular  
5 defendant if you find that he, too, was a member of the  
6 conspiracy. This would be true even though he was not  
7 present on the occasion of the act or declaration.

8 Summing it up in a simple way, if there was, in  
9 fact, a partnership in crime, each partner acts and speaks  
10 for the others in the furtherance of the partnership  
11 business, even though the other partners were not present.

12 The existence of a conspiracy and membership  
13 therein may be established by direct evidence or circum-  
14 stantial evidence.

15 Either direct or circumstantial evidence will  
16 suffice if you are convinced by such evidence beyond a  
17 reasonable doubt of the guilt of each defendant. In this  
18 case the government relies upon both direct and circum-  
19 stantial evidence. It contends that through the testimo-  
20 ny of accomplices and co-conspirators, it has, in addition to  
21 the circumstantial evidence, offered direct proof of the  
22 conspiracy.

23 If the reasonable inferences to be drawn from all  
24 the evidence lead to two conclusions, one favoring guilt  
25 and one favoring innocence, it is your duty to favor that

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2 one which favors innocence. The reason for this is that if  
3 such an inference is reasonable, there would be a reasonable  
4 doubt with respect to that evidence.

5 Whether a defendant knowingly and intentionally  
6 participated in the claimed conspiracy presents an issue of  
7 fact. Clearly, this concerns what is in one's mind.  
8 Science has not devised an instrument whereby we can go  
9 back to the time of the occurrence of events and determine  
10 what then was a person's intent or knowledge. These may  
11 be determined from one's acts, conduct and surrounding  
12 circumstances and such inferences as may be reasonably  
13 drawn therefrom.

14 If you find circumstances of secrecy or intrigue,  
15 including the use of fictitious names, or attempts to  
16 conceal the true nature of a transaction, that may be  
17 considered by you as circumstantial evidence of criminal  
18 intent.

19 In this case, the government contends the con-  
20 spirators attempted to conceal their narcotics activities  
21 by using code words or otherwise guarding or camouflaging  
22 their operations and conversations. For example, "goods"  
23 supposedly meant narcotics. "A dozen shirts" supposedly  
24 meant a kilogram of heroin.

25 If you find circumstances of intrigue or devious-

1 tp9

2 ness or attempts by a defendant to conceal the true nature  
3 of a transaction, this may be considered by you as circum-  
4 stantial evidence of knowledge of the unlawful purpose  
5 of the transaction.

6 The evidence offered on this subject, however,  
7 may not in and of itself serve as a substitute for other  
8 proof. It may be considered by you along with other  
9 evidence in the case in reaching your judgment.

10 A further word of caution. Mere association of  
11 a defendant with an alleged conspirator or conspirators  
12 does not establish his participation in the conspiracy if  
13 you find one to exist, nor does association even coupled  
14 with knowledge, even that without participation, is not  
15 enough.

16 A conspirator must knowingly and intentionally  
17 join the conspiracy. When I say join the conspiracy, I  
18 don't mean that the defendant has to file an application.  
19 However, he must knowingly join the venture; he must  
20 promote it; he must have a stake in its outcome. In  
21 the vernacular, he's got to be in on the scheme or the  
22 plan.

23 Thus, even if you find that a particular defendant  
24 associated with other defendants and you further find that  
25 the latter were participants in a conspiracy to violate the

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2       narcotics laws and that this particular defendant knew the  
3       others were engaged in such activities, this by itself  
4       would not be sufficient to find a particular defendant guilty  
5       on the conspiracy charge.

6               Let me give you an example.

7               Certain photographs were introduced into evidence  
8       by the government which purportedly show certain defendants  
9       in the company of other defendants or co-conspirators.

10       These photographs standing alone do not prove a conspiracy.

11               For example, the photographs of Hattie Ware.

12       If you believe they are accurate, that shows merely that  
13       she was in the company of other alleged co-conspirators,  
14       and this in and of itself does not prove that the conspiracy  
15       existed or that she was a member.       There may be some  
16       corroboration that the defendants knew one another, but  
17       that in and of itself is not sufficient.

18               What is necessary, as I have already said, is  
19       that a defendant participate in a conspiracy with knowledge  
20       of at least some of its purposes and with the intent to aid  
21       the accomplishment of its unlawful ends.

22               If you find that the government has sustained  
23       its burden of proof as to each defendant's participation, we  
24       reach the next element.

25               I have already mentioned that the third essential

2 element of the crime of conspiracy is that an overt act  
3 intended to effect the object of the conspiracy must be  
4 committed by at least one of the co-conspirators after the  
5 unlawful agreement has been made.

6 An overt act is any step, action or conduct which  
7 is taken to achieve, accomplish or further the object of  
8 the conspiracy. The purpose of requiring proof of an  
9 overt act is that while parties may conspire and agree  
10 to violate the law, yet they can change their minds and do  
11 nothing to carry that agreement into effect. In that  
12 event, of course, the agreement does not constitute an  
13 offense.

14 The overt act need be neither a criminal act nor  
15 the very crime which is the object of the conspiracy.

16 The overt acts charged in this indictment are:

17 "1. In or about November, 1969, the defendant  
18 Louis Inglese transported a clear plastic bag  
19 containing heroin to Diane's Bar, 2032 Second Avenue,  
20 New York, New York.

21 "2. In or about August, 1970, defendant  
22 Benjamin Tolopka received a quantity of cocaine.

23 "3. In or about October, 1970, defendant  
24 Dominick Lessa received approximately \$10,000 in  
25 cash.

2                     "4. In or about November, 1970, defendants  
3                     Louis Inglese, Joseph Delvecchio and Donato  
4                     Christiano delivered one-quarter kilogram of  
5                     heroin.

6                     "5. In or about November, 1970, defendant  
7                     Angelo Mamone went to the Beach Rose Social Club,  
8                     Bronx, New York.

9                     "6. In or about May, 1971, defendants Joseph  
10                    Delvecchio and Donato Christiano went to Bloomfield,  
11                    New Jersey, and cut and packaged three kilograms of  
12                    heroin.

13                    "7. In or about May or June, 1971, defendants  
14                    Thomas Lentini and Joseph Ceriale met in the vicinity  
15                    of a barbershop on Pleasant Avenue, New York, New  
16                    York.

17                    "8. In or about May, 1971, defendants Frank  
18                    Pugliese and Pat Dilacio met in the vicinity of  
19                    Westchester Avenue and Buhre Avenue, Bronx, New  
20                    York.

21                    "9. In or about May, 1971, defendant Frank Russo  
22                    paid defendant Frank Pugliese the sum of \$3000.

23                    "10. In or about May or June, 1971, the  
24                    defendant Joseph Marchese received one-half a kilogram  
25                    of heroin from the defendant Louis Inglese at the

2 Beach Rose Social Club, Bronx, New York.

3 "11. In or about January, 1972, the defendant  
4 John Gamba received approximately three kilograms  
5 of heroin.

6 "12. In or about March, 1972, defendants Al  
7 Greene, Hattie Ware and Basil Hansen received a  
8 quantity of heroin.

9 "13. In or about October, 1972, the defendant  
10 Joseph Delvecchio went Robbie's Mardi Gras, 731  
11 Seventh Avenue, New York, New York.

12 "14. In or about October, 1972, defendants  
13 Warren C. Robinson and Henry Salley travelled from  
14 Washington, D.C. to New Jersey.

15 "15. In or about January, 1973, defendants  
16 Carmine Tramunti and Louis Inglese had a conversation  
17 at Lo Piccolo, 3044 Westchester Avenue, Bronx, New  
18 York.

19 "16. On or about May 30, 1973, defendant  
20 Vincent D'Amico went to the Centaur Restaurant,  
21 342 East 46th Street, New York, New York.

22 "17. On or about May 30, 1973, the defendant  
23 Thomas Lentini delivered a quantity of cocaine to  
24 defendant Dominich Lessa."

25 Obviously, a particular overt act by itself

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2 may well be innocent conduct. But if it was for the  
3 purpose of furthering the conspiracy, then that event sheds  
4 its innocent appearance; it is an overt act by the alleged  
5 conspirators in furtherance of the objective of the con-  
6 spiracy.

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2 It is not necessary for the government to  
3 prove that each member of the conspiracy committed or  
4 participated in the particular overt act, since the  
5 act of any one done in furtherance of the conspiracy  
6 becomes the act of all the other members.

7 Also, the government is not required to prove  
8 each of the overt acts as alleged in the indictment.  
9 It is sufficient if it proves the commission of at  
10 least one of the acts in the Southern District of New  
11 York, which includes Manhattan and the Bronx, at or about  
12 the time alleged, although in this case the government  
13 claims that it proved more of the overt acts than the  
14 one required.

15 The overt act need not have occurred at the  
16 precise time or place as alleged. So, too, while the  
17 indictment charges that the conspiracy began on or  
18 about January 1, 1969 and continued thereafter to the  
19 date of its filing on December 6, 1973, it is not essen-  
20 tial that the government prove that the conspiracy started  
21 and ended on those specific dates. It is sufficient  
22 if you find in fact a conspiracy was formed and  
23 existed for some substantial period of time within the  
24 period set forth in the indictment and that at least  
25 one of the overt acts was committed in furtherance of

2 its objectives within that period.

3                   With these general principles as a guide,  
4 you will consider whether the government has, by the  
5 required degree of proof, established the essential  
6 elements of the conspiracy.

7                   There is one more thing that I must say to you  
8 before we leave the law of the conspiracy charge.

9                   Some of the defendants have contended that  
10 the government's proof fails to show the existence of  
11 the one, overall conspiracy which this indictment  
12 charges.       They argue that no conspiracy existed, or  
13 if in fact one did exist, then at best the evidence shows  
14 several separate and independent conspiracies in-  
15 volving various groups of defendants.

16                   Proof of several separate conspiracies is not  
17 proof of the single, overall conspiracy charged in the  
18 indictment unless one of the several conspiracies which  
19 is proved is the single conspiracy which the indictment  
20 charges.

21                   What you must do is determine whether  
22 the conspiracy charged in the indictment existed between  
23 two or more conspirators.    If you find that no such  
24 conspiracy existed, then you must acquit.       However,  
25 if you are satisfied that such a conspiracy existed, you  
must determine who were the members of that conspiracy.

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2           If you find that a particular defendant is  
3       a member of another conspiracy, not the one charged in  
4       the indictment, then you must acquit that defendant.  
5       In other words, to find a defendant guilty you must  
6       find that he was a member of the conspiracy charged in  
7       the indictment and not some other conspiracy.

8           In determining whether a given conspiracy  
9       exists, you may consider what the evidence shows as to  
10       the changes in personnel and activity.    You may  
11       find a single conspiracy, even though there were changes  
12       in personnel or activities, provided you find that some  
13       of the conspirators continued through the life of the  
14       conspiracy and that the purpose of the conspiracy con-  
15       tinued to be those charged in the indictment.

16           The fact that the parties were not always  
17       identical does not mean that there were separate con-  
18       spiracies.    In other words, if at all times the alleged  
19       conspiracy had the same overall primary purpose and the  
20       same nucleus of participants, the conspiracy would  
21       be the same basic scheme, even though in the course of  
22       its operation additional conspirators joined in and  
23       performed additional functions to carry out the  
24       scheme while others were not active or terminated their  
25       relationship.

2 If you decide that the conspiracy charged  
3 in the indictment existed between any of the defendants,  
4 you must then decide as to each defendant individually  
5 whether he or she joined the conspiracy with knowledge  
6 of any of its purposes.

7 In determining whether any defendant was a  
8 party, each is entitled to individual consideration of  
9 the proof respecting him or her, including any evidence  
10 of his or her knowledge or lack of knowledge, his or her  
11 status, his or her participation in key conversations,  
12 his or her participation in the plan, scheme or arrange-  
13 ments alleged.

14 Now let me turn to the substantive charge.

15 I must remind you that there was a change in  
16 the law on May 1, 1971. There are involved, therefore,  
17 certain counts which are charged under the old law.  
18 Counts 3 through 8 and counts 11 through 14 are charged  
19 under the old law.

20 I have already read to you the law on which  
21 these substantive violations are charged. I think it  
22 might be helpful to read to you part of those sections  
23 again in so far as they relate to the charges in the in-  
24 dictment and to set forth at length the elements of  
25 those alleged violations which the government charges.

2 The need for you to differentiate between the statutory  
3 provisions is most important.

4 The old law provided in pertinent part:

5 "Whoever fraudulently or knowingly imports  
6 or brings any narcotic drug into the United States con-  
7 trary to law, or receives, conceals, buys, sells or in  
8 any manner facilitates the transportation, concealment  
9 or sale of any such narcotic drug after being imported  
10 or brought in, knowing the same to have been imported  
11 or brought into the United States contrary to law,  
12 or conspires to commit any such acts," and it goes on,  
13 shall be punished according to law.

14 I will now read the substantive charges from  
15 the indictment which are charged under the old law.

16 Count Three:

17 "The grand jury further charges:

18 "In or about the month of June, 1969, in the  
19 Southern District of New York, Louis Inglese, otherwise  
20 known as 'Gigi', and Joseph Delvecchio, otherwise  
21 known as 'Joe Crow', the defendants, unlawfully, wilfully  
22 and knowingly did receive, conceal and facilitate the  
23 transportation and concealment of a narcotic drug, to  
24 wit, approximately 30 bags of heroin, after the said  
25 narcotic drug had been imported and brought into the

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2 United States contrary to law; knowing that the said  
3 narcotic drug had therefore been imported and brought  
4 into the United States contrary to law in that the  
5 importation and bringing of any narcotic drug into the  
6 United States, except such amounts of crude opium and  
7 coca leaves as the Director of the Bureau of Narcotics  
8 and Dangerous Drugs may find necessary to provide for  
9 medical and legitimate uses only, is prohibited."

10 Count four charges the same offense, basically.

11 In or about the month of June, 1969, again  
12 in the Southern District of New York, Louis Inglesi, also  
13 known as "Gigi," and Joseph Delvecchio, also known as  
14 "Joe Crow," the defendants, unlawfully, wilfully and  
15 knowingly did receive, conceal and facilitate the  
16 transportation and concealment of a narcotic drug; to  
17 wit, approximately one-half ounce of heroin, after the  
18 said narcotic drug had been imported and brought into  
19 the United States contrary to law, knowing that the said  
20 narcotic drug had theretofore been imported and brought  
21 into the United States contrary to law in that the  
22 importation and bringing of any narcotic drug into the  
23 United States, except such amounts of crude opium and  
24 coca leaves as the Director of the Bureau of Narcotics  
25 and Dangerous Drugs may find necessary to provide for

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2 medical and legitimate uses only, is prohibited.

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4 The other counts, count five refers to the  
5 month of November, 1969 and charges that Louis Inglesi,  
6 also known as "Gigi, unlawfully, wilfully and knowingly  
7 received, concealed and facilitated the transportation  
8 and concealment of a narcotic drug; to wit, approximately  
9 one ounce of heroin.

10 You will receive a copy of the indictment, and  
11 you will note that I am at this point trying to shorten  
12 just a bit the verbiage of the charge.

13 Count six charges, again in the month of  
14 November, 1969, the defendant Louis Inglesi, also known  
15 as "Gigi," unlawfully, wilfully and knowingly did  
16 receive, conceal and facilitate the transportation and  
17 concealment of a narcotic drug; to wit, approximately  
18 one ounce of heroin.

19 Count seven charges that in or about the month  
20 of August, 1970 the defendant Benjamin Tolopka unlawfully,  
21 wilfully and knowingly did receive, conceal and facilitate  
22 the transportation and concealment of a narcotic drug;  
23 to wit, approximately one-quarter kilogram of cocaine,  
24 after the said narcotic drug had been imported and  
25 brought into the United States contrary to law, knowing  
that the said narcotic drug had theretofore been imported

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2 and brought into the United States contrary to law  
3 in that the importation and bringing of any narcotic drug  
4 into the United States, except such amounts of crude  
5 opium and coca leaves as the Director of the Bureau of  
6 Narcotics and Dangerous Drugs may find necessary to pro-  
7 vide for medical and legitimate uses only, is pro-  
8 hibited.

9 Count eight charges that the defendant Louis  
10 Inglese, in or about the month of September, 1970, un-  
11 lawfully, wilfully and knowingly did receive, conceal  
12 and facilitate the transportation and concealment of a  
13 narcotic drug; to wit, approximately one-quarter kilogram  
14 of heroin.

15 Count eleven charges that in or about the  
16 month of November, 1970 the defendants Louis Inglese,  
17 also known as "Gigi," Joseph Delvecchio, also known  
18 as "Joe Crow," and Donato Christiano, also known as  
19 "Finnegan," unlawfully, wilfully and knowingly did re-  
20 ceive, conceal and facilitate the transportation and  
21 concealment of a narcotic drug; to wit, approximatel..  
22 one-quarter kilogram of heroin.

23 Count twelve charges that in or about the  
24 month of November, 1970, the defendants Louis Inglesc,  
25 Joseph Delvecchio, Donato Christiano, unlawfully, wilfullv

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2 and knowingly did receive, conceal and facilitate the  
3 transportation and concealment of a narcotic drug;  
4 to wit, approximately one-quarter kilogram of heroin.

5 Count thirteen charges that in or about the  
6 month of November, 1970, in the Southern District of New  
7 York, Louis Inglese, Joseph Delvecchio and Donato  
8 Christiano unlawfully, wilfully and knowingly did receive,  
9 conceal and facilitate the transportation and concealment  
10 of a narcotic drug; to wit, approximately one-quarter  
11 kilogram of heroin.

12 Count fourteen provides that in or about the  
13 month of February, 1971, in the Southern District of  
14 New York, Louis Inglese, the defendant, unlawfully, wil-  
15 fully and knowingly did receive, conceal and facilitate  
16 the transportation and concealment of a narcotic drug,  
17 to wit, approximately one ounce of heroin.

18 Ladies and gentlemen, before I begin to  
19 discuss the elements of the substantive offenses with  
20 you, I suggest that maybe it is time for a break.

21 Please, wait until I am finished. Don't  
22 discuss the case yet. All right.

23 Mr. Marshal, would you escort the jury.

24 (The jury left the courtroom.)

25 THE COURT: All right, gentlemen.

2 MR. ROSENBAUM: I want to say one thing.

3 As I entered the court building this morning  
4 there was some man picketing in front of the building  
5 with a great big sign and the words "Mafia, Innocent Cops,"  
6 think the name Serpico appeared.

7 I understand we have no control over that,  
8 your Honor, but it is possible that at the time  
9 the jury goes out to lunch that man may be picketing that  
10 area. If that be the case, may I respectfully request  
11 that the marshal take whatever precautionary steps are  
12 necessary.

13 THE COURT: I will have them go out the side  
14 door. Does that make you happy?

15 MR. ROSENBAUM: If he is not there.

16 THE COURT: I am talking about the jury.

17 MR. ROSENBAUM: So long as there is no con-  
18 frontation.

19 THE COURT: Yes, I understand. I will  
20 try to avoid that.

21 Gentlemen, take 10, but, believe me, this is  
22 a long charge. Be back here in 10 minutes.  
23 If not, the door is locked.

24 (Recess.)

25 (In open court; jury not present.)

2 MRS. ROSNER: Your Honor, do you anticipate  
3 a luncheon break before your Honor completes the charge?

4 THE COURT: Yes.

5 MR. FISHER: Your Honor, I scheduled an ap-  
6 pearance in the Eastern District before Judge Weinstein  
7 at 3. What do you think?

8 THE COURT: One of the things I have learned  
9 from this trial is that I cannot trust the estimation  
10 of time by any lawyer, either for the prosecution or the  
11 defense. Since before I took this job I used to be  
12 a lawyer, I am not even going to guess as to an estimate  
13 of time.

14 MR. KING: Will your Honor, at the end of  
15 your charge, turn the matter over to the jury for  
16 deliberation or will they start tomorrow?

17 THE COURT: No, no, they will start  
18 today.

19 MR. KING: I am sorry?

20 THE COURT: Today.

21 MR. KING: Thank you.

22 THE COURT: Bring the jury back, please.

23 (Jury present.)

24 THE COURT: Ladies and gentlemen, you all  
25 remember that just before we broke I read to you and sum-

2 marized some of the substantive counts charged against  
3 the defendants under the old law.

4 Now, in order to find any of the defend-  
5 ants guilty of these alleged violations you ladies and  
6 gentlemen of the jury must be convinced beyond a reason-  
7 able doubt of each of the following elements:

8 1. That on or about the dates set forth  
9 in these counts the defendants named in these counts  
10 either received or concealed or sold or in any manner  
11 facilitated the transportation or concealment or  
12 sale of a narcotic drug. It is not necessary for you  
13 to find that a particular defendant did all of these  
14 acts, it is enough to satisfy the element if you find  
15 that the defendant knowingly did one of the acts.

16 2. The substances dealt with must be a  
17 narcotic drug. I charge you heroin and cocaine are  
18 both narcotic drugs.

19 3. Narcotic drugs must have been illegally  
20 imported into the United States; and

21 4. The defendant must have known that the  
22 narcotics were illegally imported into the United States.

23 Each and every element of the crime must be  
24 proved by the government beyond a reasonable doubt.

25 With regard to the second element, you must

2 find beyond a reasonable doubt that the substance was  
3 heroin or cocaine as charged in the specific count,  
4 but it is not necessary that it be proved by direct  
5 evidence. Just as with any other component of a crime  
6 the existence of dealing with narcotics may be proved by  
7 circumstantial evidence. There need be no sample place  
8 before you nor need there be testimony by qualified  
9 chemists as long as the evidence furnishes grounds for  
10 inferring that the material in question was narcotics.

11 There are several categories of circumstan-  
12 tial evidence which you may consider in determining whe-  
13 ther a given defendant had possession of the narcotic  
14 drug as charged in each substantive count.

- 15 1. Testimony that someone had personally  
16 tested samples of the powder from the shipment;
- 17 2. The secrecy and deviousness with which  
18 the transactions were handled;
- 19 3. The fact that the substance in which  
20 they were dealing was a white powder;
- 21 4. The high price paid in cash or in barter  
22 for the substance;
- 23 5. The lack of complaint from the purchase  
24 and
- 25 5. Descriptive language used in certain

2 of these transactions.

4Ajhal 3 Now, it is going to occur to you, and I am  
4 sure it has right now, that there was no direct evidence  
5 offered by the government to establish element 3 and  
6 element 4 -- that is, illegal importation or that the  
7 defendants knew of the illegal importation. In fact,  
8 I don't think reference was made to it at all.

9 The government, to establish its burden on  
10 these elements, relies upon a law which permits a jury,  
11 whenever it finds that a person had a knowing possession  
12 of heroin, to draw an inference that it was illegally  
13 imported, and further, that the person shown to be in  
14 possession knew that the narcotic was illegally imported.

15 You may draw such inference if you find that  
16 the conspirators, defendants here, had knowing posses-  
17 sion of heroin in the absence of anything else.

18 A word to you as to why you may draw such  
19 an inference. Official investigations and congres-  
20 sional investigations indicate that all heroin found in  
21 the United States has been imported into the country,  
22 because heroin is not produced in the United States and  
23 it is illegal to import heroin or the products from  
24 which heroin is derived into the United States. .  
25 Therefore, you may find or you may infer -- and it is

2 entirely up to you -- that the heroin here was illegally  
3 imported.

4 It is also reasonable and rational to infer  
5 that one who has possession of heroin or deals in it  
6 would probably know the source and probably know that  
7 it was illegally imported into the country.

8 These investigations, congressional findings,  
9 official investigations, furnish a basis on which you  
10 may draw these inferences. The findings of Congress  
11 or anybody else are not binding upon you and you are not  
12 compelled to draw the inference. Whether or not you  
13 draw the inference to establish this element is something  
14 you must do by drawing on your own common sense and  
15 your own worldly experience.

16 Up to this point I have told you about heroin.  
17 What about cocaine? Cocaine is manufactured in the  
18 United States. It has specific medical purposes.  
19 How, therefore, do we consider a batch of cocaine to be  
20 illegally imported?

21 In count seven it is charged that Benjamin  
22 Tolopka violated the old narcotics laws that I have  
23 read to you. Mr. Tolopka, of course, relies on the  
24 presumption of innocence and has put forward a complete  
25 defense. But there is another defense which Mr. Tolopka

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2 has, that is, that the cocaine mentioned in count seven  
3 was not illegally imported into the United States or  
4 that if it were there is no proof that the defendant  
5 Tolopka knew of its illegal importation.

6 However, I will take judicial notice of the  
7 fact that only 6.5 kilograms of cocaine were stolen from  
8 legitimate channels during the year 1969 and only 4.65  
9 kilograms of cocaine were stolen from legitimate  
10 channels during the year 1970.

11 From this the government argues that the  
12 cocaine allegedly handled by the defendant Tolopka was  
13 illegally imported and from the proof as a whole the  
14 government argues that defendant Tolopka had knowledge  
15 of its illegal importation.

16 Of course, I should point out to you that  
17 Mr. Tolopka also has this defense in connection with the  
18 conspiracy charge. If you believe that the defend-  
19 ant Tolopka joined a conspiracy to deal in cocaine,  
20 then unless you find the cocaine was illegally imported  
21 and the defendant Tolopka knew of its illegal importation,  
22 you must acquit the defendant Tolopka.

23 Under all these substantive counts there is  
24 another federal statute usually referred to as the aiding  
25 and abetting law that comes into play and provides in

2 part:

3 "Whoever commits an offense against the  
4 United States or aids, abets, counsels, commands,  
5 induces or procures its commission" is punishable as a  
6 principal.

7 Now, you should understand no defendant can  
8 be found guilty unless he did the prohibited acts or  
9 aided and abetted those acts unlawfully, wilfully and  
10 knowingly.

11 The term unlawfully means contrary to law.  
12 So to do an act unlawfully means to do wilfully something  
13 which is contrary to law.

14 An act is done wilfully that is done voluntaril  
15 and with specific intent to do something that the law  
16 forbids.

17 An act is done knowingly if it is done  
18 voluntaril and purposely and not because of any mistake,  
19 inadvertence or other innocent reason.

20 Let us turn then to the counts of the indict-  
21 ment which are covered by the new law, and I am talking  
22 here about counts 16, 18, 19, 20, 21, 23, 24, 25, 26 and  
23 28.

24 Count sixteen charges that "In or about the mo  
25 of May, 1971, in the Southern District of New York,

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2 Frank Pugliese, also known as 'Butch,' and Frank Russo,  
3 the defendants, unlawfully, intentionally and knowingly  
4 did distribute and possess with intent to distribute a  
5 Schedule I narcotic controlled substance; to wit, approxi-  
6 mately one-eighth kilogram of heroin."

7 Count eighteen charges "In or about the month  
8 of September, 1971, in the Southern District of New York,  
9 Pat Dilacio and Frank Pugliese, also known as 'Butch,'  
10 the defendants, unlawfully, intentionally and knowingly  
11 did distribute and possess with intent to distribute a  
12 Schedule I narcotic controlled substance; to wit,  
13 approximately one-half kilogram of heroin."

14 Count nineteen charges that "In or about the  
15 month of November, 1971 John Springer, also known as  
16 'Hank,' the defendant, unlawfully, intentionally and  
17 knowingly did distribute and possess with intent to  
18 distribute a Schedule I narcotic controlled substance;  
19 to wit, one-eighth kilogram of heroin."

20 Count twenty charges the defendant Frank  
21 Pugliese, also known as "Butch," and Pat Dilacio, with  
22 distribution and possession with intent to distribute  
23 approximately one-half kilogram of heroin.

24 Count twenty-one charges "In December, 1971  
25 the defendants Joseph DiNapoli and Pat Dilacio did

2 distribute and possess with intent to distribute a  
3 Schedule I narcotic drug controlled substance; to wit,  
4 approximately two kilograms of heroin."

5 Count twenty-three charges that "In or about  
6 the month of July, 1972 Louis Inglesi, also known  
7 as 'Gigi,' Joseph Delvecchio, also known as 'Joe Crow,'  
8 Thomas Lentini, also known as 'Moe,' and Joseph Ceriale,  
9 also known as 'Joe Red,' did distribute and possess  
10 with intent to distribute approximately three kilograms  
11 of heroin."

12 Count twenty-four charges that "In or about  
13 the month of October, 1972 Louis Inglesi, also known  
14 as 'Gigi,' Joseph Delvecchio, also known as 'Joe Crow,'  
15 Thomas Lentini, also known as 'Moe,' Joseph Ceriale,  
16 also known as 'Joe Red,' did distribute and possess with  
17 intent to distribute a narcotic drug controlled  
18 substance; to wit, approximately three kilograms of  
19 heroin."

20 Count twenty-five charges that "In or about  
21 the month of November, 1972, in the Southern District  
22 of New York, George Toutcian and Vincent D'Amico, also  
23 known as 'Vincent Rizzo,' did distribute and possess  
24 with intent to distribute a Schedule I narcotic controlled  
25 substance, to wit, approximately one-quarter kilogram

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2 || of heroin."

3 Count twenty-six provides that "On or about  
4 the 10th day of January, 1973 defendant Frank Russo did  
5 distribute or possess with intent to distribute -- did  
6 I say "or possess," I meant "and possess" -- "with intent  
7 to distribute a Schedule I narcotic controlled substance,  
8 to wit, approximately one-quarter kilogram of "heroin."

16 The indictment charges that all of these  
17 substantive counts were in violation of Title 21 of the  
18 United States Code.

19 As I said, these counts are covered by the  
20 new law, which provides in pertinent part:

2 cocaine.

3 Again we must consider the aiding and abetting  
4 statute which I explained to you before. The section  
5 provides:6 "Whoever commits an offense against the  
7 United States or aids, abets, counsels, commands, induces  
8 or procures its commission" is punishable as a principal.9 In order to find a defendant guilty of one  
10 of these new law counts you must be convinced beyond a  
11 reasonable doubt of each of the following elements:12 1. That on or about the date set forth  
13 in each count the defendant or defendants named in that  
14 count distributed or possessed with intent to distribute  
15 a controlled substance;16 2. That the defendant did so knowingly  
17 or intentionally;18 3. That the substance which the defendant  
19 or defendants named in the count possessed was in fact  
20 heroin or cocaine.21 I would like to say a few words about these  
22 three elements. With regard to the first element, it  
23 is not necessary for the government to prove both  
24 prohibited acts, that is, the distribution of heroin or  
25 the possession thereof with the intent to distribute.

2 It is sufficient under the statute if the government  
3 proves one or the other.

4 Nor is it necessary to prove that a particular  
5 defendant physically possessed the drugs. Rather,  
6 they may prove that he had either actual or constructive  
7 possession.

8 Actual possession means that a person knowingly  
9 has manual or physical control or custody of the drugs,  
10 that they are in his personal possession. Constructive  
11 possession means that although the narcotics are in the  
12 manual and personal possession of another, a defendant  
13 has the power to exercise control over them or to direct  
14 their disposition or distribution or to set the  
15 price for their sale or otherwise to exercise dominion  
16 or control over them. Either type of possession may  
17 be proved by direct or circumstantial evidence or a  
18 combination of both.

19 Here the government does not claim that  
20 each defendant personally had possession of the heroin  
21 charged in these counts. Rather, the government claims  
22 that the narcotics came into the physical possession  
23 of at least one defendant who it is alleged was acting  
24 on behalf of the others and that the others thus had  
25 constructive possession because he or they had power to

2 effect the distribution and sale of the narcotics or other-  
3 wise exercised dominion over them. Also the govern-  
4 ment contends that each defendant as named in the  
5 substantive counts by his actions, including his own ac-  
6 tions in the Southern District of New York, exercised  
7 dominion or control over the drugs.

8 The second element the government is required  
9 to establish under the substantive charge is the element  
10 of intent and knowledge, that is, if you find a particular  
11 defendant distributed a narcotic drug you must find  
12 that he or she did so knowingly or intentionally.

13 An act is done knowingly or intentionally  
14 if it is done voluntarily and purposely and not because  
15 of any mistake or inadvertence or any other innocent  
16 reason. And if you find that a defendant possessed  
17 a narcotic drug you must find that he did so with intent  
18 to distribute it, that is, that each defendant intended  
19 to dispose of the heroin or cocaine by its distribution,  
20 transfer or sale or by aiding in such transfer,  
21 distribution or sale to another person or persons, that  
22 it was not for his own personal use. It means a state  
23 of mind or purpose to transfer the drugs to others,  
24 a deliberate and intentional purpose to do so.

25

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2 The government argues that the amount of heroin  
3 or cocaine involved in each count indicates an intent to  
4 distribute the narcotics to others. As to each substantive  
5 count the government must establish that the substance in  
6 fact was heroin hydrochloride, a narcotic drug, or cocaine,  
7 a narcotic drug.

8 As to the third element, the indictment charges  
9 that the narcotic drug controlled substance is either heroin  
10 or cocaine. I instruct you as a matter of law that heroin  
11 and cocaine are narcotic drug controlled substances. You,  
12 however, must still find beyond a reasonable doubt that the  
13 substance is heroin or cocaine as charged in the specific  
14 count.

15 As I have previously instructed you, it is not  
16 necessary in order for the government to prove its case  
17 that there be proof of a chemist coming in to tell you  
18 that the substance is heroin or cocaine. It is not  
19 necessary that this be proved by direct evidence. Just  
20 as with any other component of the crime, the existence  
21 of and dealing with narcotics may be proved by circumstan-  
22 ial evidence. There need be no sample, as I said, placed  
23 before you, nor need there be a qualified chemist coming  
24 in to testify to you, as long as the evidence furnishes  
25 grounds for inferring that the material in question was

1 hp2

2 narcotics.

3 There are several categories of circumstantial  
4 evidence which you may consider in determin-  
5 mining whether a given defendant had possession of the  
6 narcotic drug as charged in each substantive count.  
7 Testimony, for example, that a person had personally tested  
8 samples of the powder from a shipment, the secrecy or  
9 deviousness with which the transactions were handled, the  
10 fact that the substance in which the people were dealing  
11 was a white powder, the high prices paid for the substance,  
12 the lack of complaint on the part of the purchasers, the  
13 descriptive language used in certain transactions.

14 Again, it is not necessary for the government to  
15 show that the defendant personally committed the crime  
16 charged. Once again let me remind you about aiding and  
17 abetting. Under this law a person who aids and abets  
18 another to commit an offense is just as guilty of the  
19 offense as if he himself committed every act related to it.

20 Accordingly, you may find a defendant guilty  
21 of the substantive offense if you find beyond a reasonable  
22 doubt that one defendant committed the offense and that  
23 another defendant aided and abetted him. In order to find  
24 that a defendant aided and abetted another in possessing  
25 a narcotic drug controlled substance with intent to dis-

1 hp3

2 tribute it you must be satisfied that the particular defendant  
3 in some way knowingly associated himself with the  
4 criminal venture and he knowingly participated in it as  
5 something he wished to bring about and by some action of  
6 his tried to make it succeed, that he had a stake in this  
7 venture. In other words, if one fully aware of what he is  
8 doing plays a significant role in furthering a transaction  
9 prohibited by law he is an aider and abetter, and as such  
10 is equally guilty with the person who directly performed  
11 the illegal acts which constitute the crime.

12 Against this background of the applicable law  
13 to the specific charges which I have given let me turn now  
14 to the testimony.

15 Since counsel for the government and for the  
16 defendants in their rather extensive summations have  
17 reviewed in detail the evidence and emphasized their  
18 respective contentions, this outline will be in somewhat  
19 broad terms. I must remind you once more that my recol-  
20 lection of the evidence is certainly not binding on you.  
21 It is your recollection of the facts which governs.

22 You are the sole judges of the facts. I am going to try  
23 and summarize the testimony merely as an aid to you. In  
24 no way should you consider my summarization as binding.

25 However, if through some inadvertence of mine

1 hp4

2 any reference to the testimony does not agree with your  
3 recollection, you are to disregard that reference by me,  
4 and I emphasize this as strongly as words can convey  
5 meaning. Particularly, ladies and gentlemen, I do not  
6 weigh the credibility of witnesses. That is solely your  
7 job and I will not interfere with your province.

8 Let us go back then to the beginning of the  
9 trial. As you will recall, the first witness was Primrose  
10 Cadman.

11 She testified that she met the defendant Ingles  
12 whom she knew as Gigi, at Diane's Bar on 104th Street and  
13 Second Avenue.

14 She said that after coming from England to the  
15 United States in 1966 she became addicted to heroin in  
16 1968 and began stealing clothes and selling them to support  
17 herself and her habit.

18 She described three occasions on which she sold  
19 these clothes to Gigi at Diane's Bar. She said the first  
20 time she saw him was in May of 1969, when he bought some  
21 clothes, but she didn't know his name then.

22 The second occasion she described as a Thursday  
23 evening in June, 1969, after she had returned to Diane's  
24 Bar many times to sell stolen clothes. This time she said  
25 she went there without clothes and asked to borrow \$20

1 hp5

2 from Gigi, who, when he learned that she was addicted --  
3 this is her testimony -- offered her heroin instead of  
4 the \$20. She said that he told her "If I lend you the  
5 money, when you bring clothes in just sell them to me."

6 She testified that she took the heroin, which  
7 was handed to her by Joe Crow, and went to her boyfriend's  
8 mother's apartment and used it and that she paid Gigi back  
9 the next time she brought stolen clothes.

10 On the third occasion to which she testified  
11 she said Gigi looked at the clothes and asked if she would  
12 take part heroin and part money. She agreed and he paid  
13 her half an ounce of heroin and \$150 for the clothes.

14 She said that in addition to these three  
15 occasions there were several other times when she sold  
16 stolen clothes to Gigi in return for money and heroin,  
17 about nine or ten times in all.

18 On cross-examination she said that the amount of  
19 heroin she received when she asked for the \$20 loan was  
20 about a spoon's worth or fifteen \$2 bags.

21 She also remembered testifying before a federal  
22 grand jury that during this two-month period she would see  
23 the defendant Inglesc nearly every night for the purpose of  
24 selling him clothing.

25 She also admitted that she had been charged with

1 hp6

2 a crime in the State Courts.

3 The next witness was Sergeant Martin O'Boyle  
4 of the New York City Police Department.

5 He testified that he had participated in the  
6 arrest of Frank Stasi on May 22, 1973. He said that after  
7 Frank Stasi left the house on Williamsbridge Road he stopped  
8 him as he was driving south on the street in the Bronx and  
9 asked him to open his trunk. In the trunk O'Boyle said  
10 he saw a large box containing a number of smaller boxes  
11 labeled mannite, a mask, a scale and other items.

12 Stasi and the box were taken to Federal Plaza  
13 and eventually Stasi agreed to cooperate with the government  
14 and the box with the items therein was returned to Stasi.

15 O'Boyle said he next saw the box in Stasi's  
16 apartment on July 10th and that he directed its removal  
17 that day to an undercover apartment and, finally, that the  
18 contents were taken to the police lab. The contents con-  
19 sisted of 160 boxes labeled mannite, a mask, a sealing  
20 machine, strainers, scales, large playing cards, and one or  
21 two miscellaneous items.

22 On cross-examination Sergeant O'Boyle said that  
23 fingerprint tests were done on the box and that the results  
24 were negative, meaning that the technicians were unable  
25 to find any latent prints on the box.

1 hp7

2 Now, the next witness who testified was Frank  
3 Stasi. His testimony went for a good bit of time,  
4 and I note by the clock on yonwall that we have arrived at  
5 lunchtime. So I am going to ask the marshal to take you to  
6 lunch.

7 I beg of you, please, don't make up your mind,  
8 don't discuss the case until after I am entirely finished.

9 Mr. Marshal, would you take the jury out, please.

10 (Jury left the courtroom.)

11 MR. DOWD: Your Honor, I detected a very serious  
12 error in the charge in that you read the severed count in  
13 respect to the defendant Russo in respect to possession,  
14 the possession count with respect to January 10th, to the  
15 jury.

16 THE COURT: I read it?

17 MR. DOWD: Yes, you did, your Honor, and I move  
18 for a mistrial on that ground.

19 THE COURT: I will check on it and I will see what  
20 I can do to fix it.

21 Go ahead. I don't want, by the way, a lot of  
22 objections to the charge right now. Why don't you save  
23 them until the end.

24 MR. FISHER: This is not an objection, your Honor.

25 MR. PHILLIPS: Your Honor, before Mr. Fisher,

1 hp8

2 I would like to respond to Mr. Dowd.

3 I think your Honor did read Count 26, but I don't  
4 think it is any grounds for a mistrial. We would ask your  
5 Honor to correct it with the jury.

6 THE COURT: All right.

7 MR. DOWD: I don't think it can be corrected.

8 THE COURT: I understand.

9 Go ahead.

10 MR. FISHER: So that I may go to the Eastern  
11 District, would your Honor consider taking a break about  
12 about a quarter of three today, so I can leave without  
13 creating a disturbance.

14 THE COURT: Why don't you call Judge Dooling  
15 and see if he can take you at the end of the day.

16 MR. FISHER: What time would you now estimate,  
17 your Honor?

18 THE COURT: I can't. I am going to spend my  
19 lunch time while you folks are out cutting down on the  
20 length of this charge.

21 I expect you all back here at 2 o'clock promptly.

22 Now listen. I wasn't kidding. I made a comment  
23 before in an only semi-jocular tone. The delays caused  
24 by attorneys coming in to this part this charge, have been  
25 absolutely terrible. I can think of other words, but tha

1 hp9

2 is the strongest I will use right now. I insist that you  
3 be here at 2 o'clock, and if you are not you will find out  
4 just how mean I can be.

5 All right. 2 o'clock.

3 6 MR. KING: Judge, I may not have heard you  
7 correctly, but did I understand you to say in your charge  
8 that mere possession was sufficient? Did your Honor  
9 indicate in any way, that with possession there was an  
10 intention to distribute?

11 THE COURT: Yes.

12 MR. KING: I am sorry, Judge. I didn't hear you.

13 THE COURT: That is all right.

14 (Luncheon recess.)

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A F T E R N O O N      S E S S I O N

2.15 P.M.

(In open court, in the absence of the jury.)

5 MR. DOWD: Your Honor, if I may, to amplify on  
6 my argument before the luncheon break, referring again to  
7 Count 26, the substantive count which was severed prior to  
8 this trial and which was read to the jury by your Honor  
9 during your charge shortly before lunch, in respect to the  
10 substantive count I submit there has been severe, grievous  
11 and irreparable prejudice done to my client with respect to  
12 this, not only because of the fact that the jury has been  
13 informed that there is another charge against the defendant  
14 which they are not to consider and which is a complete  
15 contradiction to what I said in my summation when I referred  
16 to those alleged incidents as it applies only to the con-  
17 spiracy, but also "for" some reason the grand jury, when it  
18 indicted in respect to Count 26, referred to a quarter of  
19 a kilogram transaction on January 10, 1973, and we all  
20 know that, in fact, the alleged incident involved a half a  
21 kilogram.

Now, the jury has it in their mind that, in fact, perhaps even if your Honor were to tell them this is not before the Court, they might think this is an entirely different matter and my client is a major narcotics dealer

1 tp2

2 who had several transactions that night and that they are  
3 just being kept from deliberating on it, but I feel it  
4 inflames the passions of the jury and prejudices my  
5 client in this respect, and particularly since I wanted  
6 and argued so strenuously that that count should be tried  
7 in this case in the first instance.

8 It places my client in an impossible position  
9 at this time with the jury having heard what it did hear.

10 You know, I can refer to hundreds of cases in  
11 different areas in which the Supreme Court has said time and  
12 time again to believe you can erase from the jury's mind  
13 what they heard is a fiction that just doesn't happen.

14 I suggest for those reasons, my client is entitled  
15 to a mistrial.

16 THE COURT: Do you want to be heard?

17 MR. CURRAN: Very briefly, your Honor.

18 I don't think it makes much sense for a complaint  
19 just because your Honor read a count and then if your Honor,  
20 I assume, withdraws the count from the jury and simply  
21 gives them an instruction the defendant is prejudiced.

22 It seems to me if anything he is benefited by that.

23 Moreover, the evidence in this case with respect  
24 the conspiracy charge, at least the government's evidence,  
25 involves the half-kilo situation and the other two situations

1 tp3

2 with Officer Casella and I submit, your Honor, that a simple  
3 brief instruction to the effect that Count 26 is not before  
4 them, to disregard it entirely, takes care of the matter  
5 entirely.

6 MR. DOWD: Your Honor, I don't think Mr. Curran  
7 caught a bit of my argument where I said part of the  
8 problem that the count you read alleges a quarter-kilogram  
9 of heroin. Obviously, the jury has to infer it is a com-  
10 pletely different incident when we know, in fact, it isn't.

11 THE COURT: All right. Your motion for a mistria-  
12 is denied.

13 All right, Mr. Fisher, just for housekeeping  
14 purposes, I talked to Judge Dooling. I understand your  
15 co-counsel is making some kind of a motion in the Eastern  
16 District.

17 MR. FISHER: We both are.

18 THE COURT: Judge Dooling said he would have the  
19 co-counsel's arguments transcribed, you would have a chance  
20 to read it and he will wait and hear you whenever you get  
21 out of here either today or at some other date. He is not  
22 going to decide on it until he hears from you.

23 MR. FISHER: All right.

24 THE COURT: All right.

25 MR. WARNER: Your Honor, one other point.

1 tp4

2 I spoke with Mr. Engel, who I understood was in  
3 charge of censoring or excising improper parts of the  
4 indictment.

5 Overt Act No. 7 is my understanding when I had  
6 moved to have that struck your Honor had granted my motion.  
7 That says that Joseph Ceriale and Moe Lentini met outside  
8 the barbershop in May or June of 1971.

9 There is no evidence of any kind presented about  
10 that and your Honor granted my motion to have that struck  
11 and your Honor read it to the jury.

12 THE COURT: I don't recall striking that at all.  
13 There were a number of motions to strike overt acts and I  
14 denied them all.

15 All right.

16 MR. WARNER: Will your Honor reconsider, then,  
17 because there was no evidence that my client met with Moe  
18 Lentini outside the barbershop?

19 THE COURT: No.

20 Mr. Clerk, would you advise the spectators..

21 THE CLERK: As his Honor is about to charge the  
22 jury, those spectators wishing to leave the room must do so  
23 now or remain seated until the completion of the Court's  
24 charge.

25 Mr. Marshal, secure the door, please.

1 tp5

2 (Jury present.)

3 THE COURT: Ladies and gentlemen, when I talked  
4 to you this morning I read to you Count 26 of the indictment.  
5 Count 26 has been severed. You are not to consider that  
6 at all. When you finally get a copy of the indictment,  
7 I am arranging to cut out every severed count so you won't  
8 be bothered with problems like that.

9 As you may recall, we had arrived at that point  
10 in the trial in my marshalling of the evidence when Frank  
11 Stasi took the stand.

12 You remember that Frank Stasi was also called  
13 Boo-Boo or The Boob. He began his testimony by identifying  
14 a box that had been in the trunk of his car when he was  
15 arrested and, of course, what was in it. He explained how  
16 such items would be used to cut narcotics.

17 He said starting in 1970, he worked as a steward  
18 in the Beach Rose Social Club on the corner of Wilkinson  
19 and Westchester Avenues in the Bronx and he used to see the  
20 defendant Inglese, who he knew as Gigi, there almost every  
21 day. He said he also saw Joe Crow, who was Joseph Del-  
22 vecchio, there three or four times a week and he saw  
23 Finnegan, Donato Cristiano also there.

24 Stasi then described his involvement in narcotics.  
25 He said that one day between the middle and end of 1970

1 tp6

2 Gigi took him aside and said that he was expecting some junk  
3 and that Joe Crow would show Stasi what to do.

4 About two or three days later, Gigi told him  
5 he would be going out to New Jersey with Joe Crow, and that  
6 around nine that evening Joe Crow came to the club and drove  
7 Stasi out to his house in Bloomfield, New Jersey. There  
8 in the kitchen Stasi said they tested and cut three kilos  
9 of heroin with mannite, making 12 half-kilo packages in  
10 sealed bags which were placed in a suitcase. Stasi said  
11 that they then went for a drive and eventually arrived at  
12 the Blue Lounge, where Joe Crow talked to Gigi and Gigi  
13 gave Stasi \$100.

14 Stasi said that between then and when he was  
15 arrested in May, 1973, he had at least eight such mixing  
16 sessions. He testified the next one was about three  
17 months later and that on that occasion he and Finnegan  
18 drove out to Joe Crow's house in Stasi's car. He said that  
19 this time the mannite was in block form whereas the first  
20 time it had been in powder form, and, again, they cut  
21 three kilos of heroin to make the 12 half-kilos.

22 When they finished, Stasi quoted Joe Crow as  
23 saying he would take Finnegan with him to see his man and  
24 that Stasi should go back and find Gigi.

25 Stasi said he then drove back to the Bronx and

1 tp7

2 found Gigi in the Blue Lounge and that Joe Crow and Finnegan  
3 showed up later and walked to the back of the Blue Lounge  
4 with Gigi.

5 On cross-examination, however, Stasi said that  
6 he told agents twice that Finnegan never mixed. This he  
7 explained by saying he was covering up.

8 On cross-examination, however, he also said that  
9 at the same time he said that Finnegan never mixed with him  
10 that he had heard Finnegan had mixed.

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2 Between the second and the third mixing  
3 sessions Stasi described two shopping expeditions, one  
4 for narcotics paraphernalia and the other for mannite.  
5 He testified again Gigi approached him at the Beach  
6 Rose Social Club and told him to stay around, that Joe  
7 Crow was coming. He said that he and Joe Crow drove  
8 out to the area of Bloomfield, that Joe Crow went into  
9 various stores buying strainers, scales, measuring spoons  
10 and a mask. Stasi said they drove back to the Bronx  
11 and Stasi said he put these items in his kitchen  
12 pantry. He said this was the same narcotics parapher-  
13 nalia that was found in the trunk of his car on the  
14 day he was arrested.

15 Stasi then testified a couple of days later  
16 Gigi sent him to buy some mannite or mannita on Pleasant  
17 Avenue from a man named Joe Red. Stasi said that when  
18 he first approached Joe Red, who he identified as Joseph  
19 Ceriale, Joe Red hesitated because Stasi didn't have  
20 the money to pay him, but the next day when Stasi brought  
21 Gigi's assurance that he would get paid, Joe Red agreed  
22 to get the mannite.

23 Stasi said that Joe Red took the keys to  
24 Stasi's car and drove off, returning about an hour later  
25 with four cases of mannite in the trunk worth \$2000 in

2 all. Stasi said he drove to the Bronx, put the nannite  
3 in his apartment and then went to the Beach Rose Social  
4 Club and told Gigi, who instructed him to leave it in  
5 his apartment.

6 Stasi said that Joe Red was the same person  
7 as the defendant Joseph Ceriale, but on cross examination  
8 he admitted having said to the police that Joe Red had  
9 red hair. He also said he had no trouble identifying  
10 the color red.

11 Stasi testified that the third mixing session  
12 occurred a couple of days later at his apartment.  
13 He said that Gigi told him that they were going to use  
14 his apartment. He described how Joe Crow arrived  
15 around 9 o'clock with the heroin and once again they made 12  
16 half kilos. He said that Joe Crow put 10 halves in  
17 a suitcase and told him to keep the other two in the  
18 apartment and that Stasi then went and reported to  
19 Gigi at the Blue Lounge.

20 Stasi then testified that the next day at the  
21 club Gigi told him to get a half and bring it to him,  
22 which Stasi did. He said he brought the package into  
23 the kitchen of the club in a brown paper bag and that  
24 John Barnaba then walked into the kitchen and came out  
25 with the bag under his jacket.

2 The same night, according to Stasi, Gigi  
3 told him to go and get the other half and bring it to him.  
4 Stasi said that he fetched it and gave it to Gigi  
5 in the kitchen of the club. He went out to the front  
6 of the club and Joseph Marchese came in and walked out  
7 of the kitchen with a package under his arm. Stasi  
8 testified that this occurred in late 1970.

21 When Joe Crow arrived that night with three  
22 kilos of heroin Stasi said they strained the nannite,  
23 which was in block form, and they mixed it with the heroin.  
24 Again, the testimony was Joe Crow put 10 half kilos in  
25 the suitcase and left two behind. Stasi said the

2 next night Gigi told him to give one of the packages to  
3 John Barnaba, which he put in the front seat of Barnaba's  
4 car.

5 The next thing Stasi testified to was during  
6 the warm part of the year the Beach Rose Social Club was  
7 closed and he and his friends started going instead to  
8 an espresso shop on Westchester Avenue called Lo Piccolo's.  
9

10 Stasi testified at Lo Piccolo's he used to  
11 see Carmine Tramunti almost every day and Gigi and Finne-  
12 gan almost every day. He said he also saw Joe Crow  
13 and Joe Lentini there, but not that often.

14 He said that after he started going to Lo Pic-  
15 colo's he was sent by Gigi a third time to buy mannite  
16 from Joe Red on Pleasant Avenue and that he and Joe Red  
17 followed the same procedure as they had the other two  
18 times.

19 The sixth mixing session, Stasi said,  
20 occurred a couple of months later when Gigi told him,  
21 again to go to Joe Crow's house. He said that he and  
22 Joe Crow mixed three kilos of heroin following the same  
23 procedure as the other times and that he then reported  
24 to Gigi at the Blue Lounge.

25 Stasi testified that the next mixing session  
occurred a couple of months later, in late 1971, at his

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2 apartment. He said that Gigi told him Moe Lentini would  
3 mix with him because Joe Crow was a little hot. He  
4 said that Joe Crow was there and taught Moe Lentini  
5 how to mix. He and Joe Crow then drove to the Mardi  
6 Gras Bar on 49th Street with the 12 half kilos of heroin  
7 in the suitcase in the trunk of his car and did not re-  
8 port to Gigi.

9 The last mixing session, according to Stasi,  
10 was preceded by another purchase of mannite from  
11 Joe Red for \$2000 using the same procedure as previously.

12 The next day Stasi said Gigi told him to  
13 go to his house to meet Joe Crow. When they met  
14 Joe Crow said he was going to leave the mixing to Stasi  
15 and Moe Lentini. Stasi said that he and Moe Lentini  
16 mixed the usual way and he reported to Joe Crow that  
17 all had gone well. Stasi said that later Joe Crow  
18 picked up the narcotics from Stasi's apartment in a suit-  
19 case.

20 Stasi testified that a couple of days after  
21 each mixing session Gigi paid him \$2000 in cash. He  
22 said that three or four of these payments were made in  
23 Gigi's basement at Dwight Place in the Bronx. There  
24 Stasi said he found Gigi, Joe Crow and on one occasion  
25 Finnegan counting money and dividing it into \$1000 stacks.

2 and that Gigi asked him to help them. He said that  
3 the amount of money was roughly 30 to 40 thousand dollars  
4 and he and the others were paid for this money.

5 After it was counted, Stasi said that Gigi  
6 would put it in a bag and take it to another room.

7 On cross examination, however, Stasi remembered  
8 telling an agent on one occasion that he didn't know how  
9 much money Gigi had and that Gigi never gave him any money.

10 Stasi further testified that on two occasions at  
11 the Beach Rose Social Club he saw Gigi give a bag of money  
12 to Frank Pellegrino and asked him to go to the bank  
13 and get big money. He said that when Frank Pelle-  
14 grino returned to the club the bag he was carrying  
15 looked smaller.

16 At one point in his testimony Stasi said that  
17 he had told some agents that Joe Lentini had never  
18 mixed at his house, they didn't know where, if anywhere,  
19 he had ever mixed.

20 With regard to Angelo Mamone, Stasi testified  
21 he saw him at the Beach Rose Social Club about three  
22 or four times a week and that he saw him talking to Gigi  
23 but didn't hear anything that was said. He said he  
24 never saw Mamone talking to Joe Crow. Stasi said  
25 that once at Gigi's request he went to Mamone's house

2 and gave him a message that Gigi would like to see  
3 him, but that Gigi never explained why.

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5 With regard to Carmine Tramunti, Stasi testi-  
6 fied that he once overheard a conversation between Gigi  
7 and Carmine Tramunti at the Lo Piccolo Espresso Shop.  
8 He said that as he passed them on the way to the men's  
9 room Gigi said to Carmine Tramunti, "I expect some goods,  
10 I'm going to need some money," and Carmine nodded his  
head.

11 Stasi said a couple of days later Gigi told  
12 him outside the Lo Piccolo that he expected some goods  
13 and he didn't get them. Stasi explained that goods,  
14 the word, refers to narcotics.

15 Stasi further testified that a couple of  
16 months later he and Carmine Tramunti went to hear Buddy  
17 Rich at the Tear Drops Bon-Soir. He said they drove  
18 there with Vinnie DiNapoli and sat with Vinnie DiNapoli  
19 and Vinnie's wife, Anthony's girlfriend and a sister  
20 and her husband and two unescorted women.

21 Stasi said that he sat next to Carmine Tramunti  
22 and that Carmine said to him, "I miss the big guy.  
23 Without him, nothing goes right. You know, the club,  
24 there's nothing happening in the club."

25 Stasi said he told Carmine that he was going

2 to see Gigi. He testified that the next day he went  
3 to see Gigi and Gigi asked him, "What's happening, have  
4 you seen Joe Crow or Finnegan?"

5 Stasi said he told Gigi things were pretty  
6 slow and that he said to Gigi, "You know, I seen Carmine  
7 about the club and he says about the conversation  
8 about the money, yes or no, you would know," and Stasi  
9 told us that Gigi replied, "If you don't know what's  
10 happening I don't know, just say no."

11 Stasi said that when he relayed this to  
12 Carmine at Lo Piccolo's the next day Carmine said, "All  
13 right, I guess nothing is happening."

14 Stasi's statement that Inglese said to Tramunti  
15 that he was expecting some goods was challenged on  
16 cross examination. Stasi remembered telling the New  
17 York City police that Inglese said that he was expecting  
18 something. Stasi at one time told the police that  
19 Inglese didn't mention goods.

20 Stasi also testified that in 1973 he heard  
21 a conversation between Gigi and Carmine Tramunti with  
22 regard to getting Joe Lentini out of jail. According  
23 to Stasi, Gigi said they needed collateral and  
24 Carmine said there was nothing he could do about that,  
25 but they should try to get him out.

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Stasi quoted Gigi as saying that it was important to the organization to get him out because Joe Crow was hot and Moe Lentini was good at figuring and mixing. Stasi testified that Gigi had told him to take a message to Lentini's girl that Joe Crow had someone with property and that there was a chance they could get him out.

You will remember, much later in the trial, by the way, that there was a stipulation which stated that Thomas Lentini or Moe Lentini was arrested on April 14, 1973, that on April 14, 1973 he was arraigned and bail was set in his case in the amount of \$75,000 cash or surety, that Lentini was remanded in custody to the Federal Detention Headquarters in lieu of bail, and that on May 3, 1973 bail was reduced to \$75,000 personal recognizance bond co-signed by Lentini's two brothers, Michael and Joseph Lentini, and a family friend by the name of Vincent Trapani, secured by \$25,000 cash or surety, that on May 4th Lentini made bail and was released, the \$25,000 bond was put up by the Stuyvesant Insurance Company, a bonding company, and the surety was a deed of Mr. Trapani's.

Stasi also testified that when Joe Lentini did get out on bail he told Stasi to meet Jack Spada.

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2 whom Stasi called Jackamine, at the Pelham Log Cabin  
3 between 8 and 9 that night. Stasi said that when they  
4 arrived at the Pelham Log Cabin Gigi told him he shouldn't  
5 be late when there is a guy sitting on something.  
6

7 Stasi testified that he called Jackamine into  
8 the men's room, where Jackamine gave him half a kilo of  
9 cocaine for Joe Lentini. According to Stasi, Jackamine  
10 said Gigi was going to get some of it. Then Gigi came  
11 in and Jackamine, Gigi and Stasi divided it up.

12 Stasi said he then took the cocaine to the  
13 house of his friend Liz at 1651 Williamsbridge Road  
14 and put it in her living room closet. He said  
15 that after that he used to take some out from time to  
16 time and use it for himself or for his friends.

17 Stasi said that he once took a sample of the  
18 cocaine to the Centaur Bar at 46th Street between First  
19 and Second Avenues and gave it to Vinnie, who called his  
20 friend Ralph, who said he would give it to  
21 his man to see if it was any good. Stasi identified  
22 Vinnie as the defendant Vincent D'Amico.

23 Stasi said on another occasion Vinnie asked  
24 him for heroin and he bought a quarter kilo for Vinnie  
25 from George Tontoian at the Pelham Log Cabin. He  
testified that he brought the quarter kilo to Vinnie's

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2 apartment on 57th Street next to the Holiday Inn and  
3 that the name on the bell was Rizzo. He said Vinnie  
4 then called Ralph, who came over, and that Vinnie and  
5 Ralph paid him \$7000 for the quarter, of which he paid  
6 \$6500 to George Toutoian and kept \$500 for himself.  
7

8 Stasi also testified about his arrest in May  
9 of 1973. He said he was arrested as he was leaving  
10 Liz' apartment on Williamsbridge Road. He said that  
11 after he was arrested he agreed to cooperate with the  
12 authorities and that they gave him back the box and  
13 the paraphernalia.

14 Stasi said that when he was released he  
15 went first to the Centaur, where he spoke to Vinnie  
16 about the sample he had given him. He quoted Vinnie  
17 as saying he hadn't seen his man yet and that he was  
18 more interested in heroin than cocaine. Stasi said  
19 he told Vinnie that he would let him know if he heard  
20 of any.

21 Stasi also testified that after his arrest  
22 he saw Moe Lentini on Pleasant Avenue and Moe asked him  
23 to bring an eighth of a kilo of cocaine from Liz'  
24 apartment that evening. He said that when he brought  
25 it Moe Lentini gave it to Dominick Lessa.

On cross examination Stasi also testified that

2 he got the narcotics he sold to Allie Boy, who we know  
3 to be Al Casella, from George Tootoian and that Gigi never  
4 knew he was dealing with George Tootoian.

5 The fourth witness was Frank Dabbiero. He  
6 was a detective from the New York City Police Department.

7 He testified that along with other detectives  
8 he was assigned to surveillance of the Beach Rose Social  
9 Club from about May 15, 1971 to January 15, 1972. During  
10 that period he said he went to the area approximately  
11 45, 50 times, at different hours of the day and night,  
12 spending four to six hours each time.

13 He said that he saw Louis Ingrose at the  
14 club almost every time he was there. He also saw Frank  
15 Stasi there very often. He said he saw Donato  
16 Christiano there and Frank Pellegrino and Joseph  
17 Delvecchio.

18 He said he and Detective Logan took photo-  
19 graphs of what they observed and he identified a number  
20 of people in government's exhibits which are in evidence  
21 and which you can see.

22 Detective Dabbiero was followed by Detective  
23 DeMarco of the New York City Police Department. He  
24 also testified that he was assigned to conduct surveil-  
25 lance of the Beach Rose Social Club in April of 1972.

2 He said he was secreted in a storeroom  
3 at the end of the station on the elevated train on West-  
4 chester Avenue and that from there he took the photograph  
5 which are in evidence. He identified many of the in-  
6 dividuals in the photographs, including Moe Lentini,  
7 Finnegar, Frank Pellegrino, Louis Ingles, Mario Starace,  
8 Benjamin Castellazo, Vincent Papa, Frank Stasi, Vito  
9 Falcetti and Angelo Mamone.

10 He testified that on April 28, 1972 Vito Fal-  
11 cetti entered the club wearing a Transit Authority  
12 uniform and shortly thereafter Ralph Touloian came out  
13 and gestured in the direction where he was sitting and  
14 so did Louis Ingles. He said that thereafter he  
15 took no more photographs.

16 The next witness was Jack Fasanello, a forensic  
17 chemist for the Drug Enforcement Administration.

18 He testified that in the course of his work  
19 he had analyzed substances to determine if they were  
20 narcotic drugs several hundred, possibly close to a  
21 thousand times. He said he had checked for heroin  
22 possibly 500 times and found heroin about 80 per cent  
23 of the 500 times. In addition, he said that mannitol,  
24 the major component of mannite, was found in 35 to  
25 40 per cent of the heroin samples which he had checked.

2 Mr. Fasanello said that on December 13, 1973  
3 he went with Agent Torrey Shutes, a New York City police-  
4 man, and another forensic chemist, Michael Tsougros, to  
5 an apartment at 1113 Vincent Avenue in the Bronx and re-  
6 moved an extension leaf from the Formica kitchen table.  
7 He told us that they collected some white powder  
8 from the eight metal leaf supports which he later  
9 tested and found contained heroin.

10 He said they also checked some more white powder  
11 from under the refrigerator which Michael Tsougros  
12 tested and concluded that it was mannitol, the major com-  
13 ponent of mannite.

14 The next witness was Mario Figuero, who  
15 said that he was a guard in the Pelham Bay branch of the  
16 Chase Manhattan Bank on Westchester Avenue in the Bronx.  
17

18 He looked at Government's Exhibit 21 and  
19 identified Frank Swift Pellegrino as one of the customers  
20 of the bank. He testified that Pellegrino first started  
21 coming to the bank in the middle of 1970 and that from  
22 then through 1972 he would come an average of one, two  
23 or three times a week. He said that Pellegrino always  
24 carried a paper bag which he immediately gave to one  
25 of the tellers. He said the teller would take out the  
contents and it looked as if the teller was counting

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2 money.

3 He admitted that once he saw the bag contained  
4 a stack of bills two or three inches high and that  
5 the teller gave Pellegrino a smaller stack in return,  
6 less than a quarter of an inch thick.

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2B 2 The next witness was Kevin Daly of the New York  
3 City Police Department.

4 He testified that he had been assigned to  
5 surveillance of Frank Stasi on February 12, 1973. He  
6 said that he followed Stasi to the Lo Piccolo Espresso Shop,  
7 where Stasi exited with two other men about 9 o'clock.  
8

9 Detective Daly said he followed them to the  
10 Bon Soir Teardrops, where Stasi dropped off the other two  
11 men and parked the car before entering himself. The  
12 detective said that he and Detective O'Donnell had difficulty  
13 getting into the Bon Soir, but that once inside they went  
14 to the bar and from there they observed Carmine Tramunti  
15 and Frank Stasi sitting together at a table in the extreme  
16 righthand corner. He said they were with other men and  
17 women. He said that he and Detective O'Donnell stayed  
18 approximately five hours and that Carmine Tramunti was there  
19 the entire time, although Frank Stasi left for some 40  
20 minutes.

21 Detective Daly was followed by Detective O'Donnell.  
22 O'Donnell testified to having conducted surveillance of  
23 Frank Stasi on May 1, 1973. He said he saw him leave his  
24 residence at 1113 Vincent Avenue in the Bronx, drive to  
25 Pleasant Avenue in Manhattan and back to Lo Piccolo's in  
the Bronx.

2                   He said Stasi went into Lo Piccolo's, came out  
3                   a few minutes later with Louis Inglesi and also Carmine  
4                   Tramunti.   The three had a brief conversation and then  
5                   Stasi got into his car with Inglesi and drove off down  
6                   Westchester Avenue.

7                   Detective O'Donnell then testified about the  
8                   evening of February 12, 1973.  He said that he and Detective  
9                   Daly followed Frank Stasi and two other men from Lo Piccolo  
10                  to the Teardrops Bon Soir and that Stasi entered a few  
11                  minutes after the other two.  He said that he and Detective  
12                  Daly had trouble getting in and had to buy a ticket for  
13                  \$10.

14                  He said that once inside he saw Carmine Tramunti  
15                  and Frank Stasi sitting next to each other and talking and  
16                  that Tramunti was there the entire four to five hours that  
17                  the detective remained.  He said he lost sight of Stasi  
18                  for some minutes, however.

19                  The next witness was Francis J. Connally of the  
20                  New York City Police Department.  He testified that while  
21                  on surveillance on February 12 he saw Stasi and two other  
22                  unknown men enter the Teardrops Bon Soir Nightclub.  He  
23                  said he attempted to gain entry, but could not, and he remained  
24                  on surveillance outside until he decided to go home and  
25                  get some kind of a camera from his home.

2 When he returned he was permitted inside the  
3 Teardrops Bon Soir and he joined Officers Daly and O'Donnell  
4 at the bar. He said he took pictures of the band area,  
5 as did other people. He added that he recognized Frank  
6 Stasi and Carmine Tramunti, but did not take pictures of  
7 them. He said he didn't see anyone else taking pictures of  
8 them either.

9 Connally testified that on May 29, 1973, he  
10 went to an apartment at 1651 Williamsbridge Road with  
11 Frank Stasi and Sergeant Martin O'Boyle. Stasi took a  
12 paper bag from a closet and out of it took a plastic bag  
13 containing about a pound of white powder. He took out of  
14 that white powder a sample and put it into another bag.  
15 Detective Connally said that he took that sample to the  
16 chemist.

17 The government and the defendants stipulated that  
18 if the chemist were to testify that he would testify that  
19 he tested this sample and found it to contain cocaine.

20 Detective Connally further testified that on  
21 the following evening, May 30, 1973, he was on duty in the  
22 area of 116th Street and Pleasant Avenue, that he placed  
23 a Kel transmitting device on Frank Stasi. He said that  
24 sitting in his vehicle he made a recording of what he had  
25 heard over the receiver, but it was very garbled and very

2 poor reception. He said he later listened to the tape  
3 and found it very garbled and difficult to understand any-  
4 thing that was said.

5 He said around 8.30 that evening he observed  
6 Frank Stasi park his car on Pleasant Avenue between 116th  
7 and 117th Street and talk to Thomas 'Joe' Lentini for a few  
8 minutes. He said they then walked north to 117th Street  
9 and entered a tavern on the corner.

10 He said that later, at about 11.00 p.m., he saw  
11 Stasi get in his car and that he, Detective Connally, then  
12 drove to the Centaur Bar at 46th Street between First and  
13 Second Avenues. He said that shortly after he got there  
14 Stasi arrived, sat down with Vincent D'Amico at a table.  
15 He said they conversed for a short time, then got up and  
16 went to the rear of the bar for a few minutes and then  
17 came back. He said Vincent D'Amico then rejoined the table  
18 where he had been sitting before Stasi arrived. Stasi went  
19 to the bar. He said that altogether the conversation  
20 between Stasi and D'Amico lasted about half an hour.

21 The next witness, ladies and gentlemen, you may  
22 recall was John Barnaba, who was also somewhat lengthy.  
23 So even though we are a wee bit early, I think it's only  
24 right and just that you get a 10-minute break from listening  
25 to me.

2 Mr. Marshal, would you take the jury out, please.  
3 (Jury left the courtroom.)

4 THE COURT: Ladies and gentlemen, it is now ten  
5 minutes to three. I expect you back here at exactly three  
6 o'clock.

7 MR. DOWD: Your Honor, may I just put on the  
8 record in respect to your comments about Count 26 that I still  
9 object.

10 I don't think that the abstract mention of Count  
11 26 after the very specific reading of the count does anything  
12 at all to the jury. I don't think they have the vaguest idea  
13 what Count 26 is, except that we know --

14 THE COURT: You don't want me to read the thing  
15 again, do you?

16 MR. DOWD: I think that there is something else  
17 that has to be done, your Honor.

18 THE COURT: All right. I will see if I can do  
19 something else.

20 Look, take your exceptions later.

21 MRS. ROSNER: It's not an exception. Do you  
22 intend to go back, your Honor, over any of the matters  
23 developed during cross-examination of the respective wit-  
24 nesses apart from what your Honor has already done, for  
25 instance, with Stasi?

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2 THE COURT: Yes.

3 MRS. ROSNER: You do?

4 THE COURT: In a different way.

5 MRS. ROSNER: Thank you.

6 THE COURT: All right.

7 (Recess.)

8 (Jury present.)

9 THE COURT: We also heard at length from John  
10 Barnaba, who described his involvement in at least 17  
11 different narcotic transactions between July, 1970, and  
12 November, 1972, when he was arrested.13 He testified to various conversations between  
14 himself and some of the defendants and alleged co-conspirators.  
15 He began by stating that in 1968 he ran a business training  
16 guard dogs and that Richard Forbrick used to take care of  
17 his dogs at the animal hospital at 4151 Boston Road in the  
18 Bronx.19 He said that he had told Forbrick that he had been  
20 in jail for narcotics and starting in December, 1969,  
21 Forbrick began asking periodically whether he, Barnaba,  
22 could supply drugs. He told us his response was that  
23 Forbrick should let him know when he was ready.24 He then stated that in July, 1970, he saw Louis  
25 Inglesce, whom he knew as Cigi, on Westchester Avenue and

2 they both pulled over to the curb and started to talk.  
3 Barnaba said he asked Gigi whether he could supply him with  
4 goods and Gigi said yes, that Barnaba could find him at the  
5 Beach Rose Social Club and that if he wasn't there Barnaba  
6 could see Finnegan or Joe Crow.

7 Barnaba said that several weeks later, in  
8 August, 1970, Forbrick told him at the animal hospital that  
9 he needed a quarter-kilo of heroin and a quarter-kilo of  
10 cocaine, that the heroin was to be for the Arrow and the  
11 cocaine for Ben Tolopka.

12 Barnaba said he went to the Beach Rose Social  
13 Club and asked Gigi if he had anything. He said that when  
14 Gigi heard how much he wanted he told him the price would  
15 be \$3000 for the cocaine and \$5500 for the heroin.

16 Barnaba stated that he went back to Forbrick  
17 and told him he could get it and then returned to the club.  
18 He said that Gigi instructed him to go down the block in  
19 his car and wait, which he did, and that 15 or 20 minutes  
20 later Joe Crow and Finnegan pulled alongside his car in a  
21 black Cadillac convertible and Finnegan handed him a package  
22 through the window, telling him that the cocaine was marked.

23 Barnaba testified he drove back to the animal  
24 hospital, but that Forbrick wasn't there, and he then went  
25 to Tolopka's house on 233rd Street near Harper Avenue.

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2 He said that Tolopka answered the door and that when he  
3 heard Barnaba had the cocaine he asked him to bring it in.

4 Barnaba said that when he got the cocaine from  
5 the car Tolopka led him down to the basement, where a black  
6 man was standing by a table with a scale on it. He said  
7 that Tolopka weighed the cocaine, the black man snorted  
8 some of it and said it was all right.

9 According to Barnaba, Tolopka then told him he  
10 would give Richie the money the next day. Barnaba said  
11 he then returned to the animal hospital, told Forbrick that  
12 he had given the cocaine to Tolopka and gave Forbrick the  
13 heroin, which he put in a metal shed near the house.

14 He related that the next afternoon at the animal  
15 hospital Forbrick gave him a paper bag with what Forbrick  
16 said was \$8500 in it and that he told Forbrick he wanted  
17 \$500 for himself for every quarter he gave him.

18 He said that he took the money to the Beach Rose  
19 Social Club and gave it to Gigi without counting it. He  
20 quoted Gigi as saying that from then on he would have to  
21 come up with front money because no one was paying him when  
22 they were supposed to.

23

24

25

Barnaba said that he then went back to the animal hospital and collected \$1000 from Forbrick.

On cross-examination Barnaba was asked how many vestibules he passed through on the way to Tolopka's basement and he said one that he recalled.

Barnaba described a second transaction in September, 1970, when he said Forbrick told him that he needed a quarter-kilo of heroin and he wanted to know if Barnaba could supply it. Barnaba told Forbrick he thought he could, but he would have to have the money in advance. He went to see Gigi, and Gigi said he could have it and the price would be \$5500. Barnaba said he went back to the hospital, collected \$6000 from Forbrick and brought it to the club, keeping \$500 for himself.

At the club he said he saw Gigi, Joe Crow and Finnegan and he gave the money to Gigi, who counted it and put it under the bar. Barnaba said that he hung around the club for three or four hours, during which time Gigi offered to hold aside another half-kilo for him, but he declined.

He said that Frank Stasi was there and Finnegan had left. He added a little while later Finnegan came back and that some 15 or 20 minutes after that Gigi motioned Barnaba over to the bathroom and pulled the bag out from near the bowl and gave it to him. Barnaba said he put

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2 it in his belt and returned to the animal hospital and  
3 delivered it to Forbrick.

4 According to Barnaba, the third transaction was  
5 in early October, 1970, when he saw Dominick Lessa at the  
6 Pine Tree Inn near the animal hospital. Lessa said he  
7 could get him anything any time in any amount he wanted.  
8

9 The next day Barnaba said Forbrick told him that  
10 he had a deal for two quarters set up with a man named  
11 Trinnie. Barnaba testified that he went to the Pine Tree  
12 Inn where Forbrick introduced him to Trinnie, who, in turn,  
13 introduced him to another man named Lepore.

14 Barnaba testified the next day he called Lessa,  
15 that they met at the Pine Tree Inn and that Lessa said he  
16 could get the two quarters for the price of \$5100 per  
17 quarter. Barnaba said Lessa then drove him over to Long  
18 Island and left him in the car while Lessa walked some  
19 blocks away and entered what looked like a bar. After a  
20 while he came back with a paper bag with two plastic bags  
21 in it and told him that he had two days to either pay for it  
22 or return it. They drove back to the Bronx and Lessa  
23 dropped him off at the Pine Tree Inn.

24 Barnaba said he went to the animal hospital and  
25 told Forbrick to get the buyers from the Pine Tree Inn.  
Barnaba then delivered to the buyers a package and instructed

2 them to have the money the next day. When the money was  
3 delivered, Barnaba called Lessa and met him at Pilgrim  
4 Avenue in the Bronx where he gave him \$10,000. Barnaba said  
5 he kept \$100 and gave \$100 to Forbrick.

6 Barnaba testified that later that month he  
7 needed one-eighth of cocaine. He said that he called Lessa  
8 and, once again, went to Long Island as before. According  
9 to Barnaba, Lessa said in the car that he had two days to  
10 either pay for it or return it.

11 Barnaba said Lessa parked the car and left and  
12 soon came back and said that he could get two quarters  
13 plus the eighth, and that the cocaine was good, except that  
14 the color was brown. Barnaba said he told Lessa he didn't  
15 have an order for two quarters and he asked Lessa the price,  
16 and was told \$3500 per quarter. Barnaba said that he  
17 told Lessa that the price was high and that he had been  
18 getting it cheaper from Gigi, and Lessa replied that both  
19 he and Gigi got it from Vincent Papa, but that his was pure  
20 whereas Gigi's was cut in half by adding.

21 Barnaba said Lessa then left the car and came  
22 back half an hour later with a bag, and that they returned  
23 to the Bronx. There Barnaba said he told Forbrick about  
24 the offer of the two quarters and they agreed to try to get  
25 rid of it, perhaps to the Arrow.

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2                   The next day Barnaba said he saw Forbrick, who  
3                   said that he could not get rid of the two quarters, but  
4                   that he had gotten rid of the eighth but then got it back  
5                   from Ben Tolopka, who said it was no good.

6                   Barnaba said that Forbrick showed him the bag,  
7                   which was ripped open with mannite added on top. According  
8                   to Barnaba, he said he couldn't take it back and asked  
9                   Forbrick to get Ben over.

10                  Barnaba said that when Ben came he said he had  
11                  opened it to test it. Barnaba said that he told Ben, "You  
12                  should have just slit it a little bit."

13                  Heated discussion followed, until Ben pushed his  
14                  coat back, revealing a pistol.

15                  After this argument Barnaba told Forbrick the  
16                  should not deal with Tolopka any more.

17                  Ladies and gentlemen, if you believe this and  
18                  that Ben Tolopka was not involved with the conspiracy there-  
19                  after, I tell you from that point on, anything that happened  
20                  with any other member of the conspiracy, if you find there  
21                  was a conspiracy, cannot be binding on the defendant Tolopka

22                  Continuing with Barnaba's testimony, he said the  
23                  next day he gave Lessa back the two quarters plus \$1800  
24                  that he and Forbrick had put together. The following day  
25                  they managed to sell the eighth to the Arrow.

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2 Barnaba said a couple of weeks later he was  
3 summoned to see Gigi and Gigi told him he had anything he  
4 needed. He said that Joe Crow asked whether he had been  
5 dealing with someone else and that he, Barnaba, said no.

6 Barnaba testified that the next narcotics trans-  
7 action occurred in November, 1970, when Forbrick said he  
8 needed a quarter of cocaine and a quarter of heroin.  
9 Barnaba said he went to the Beach Rose Social Club and was  
10 told by Gigi that he could have it that night. Barnaba  
11 said he went and got \$8500 from Forbrick and took it to the  
12 club, where Gigi put it under the bar. He said that  
13 Finnegan and Joe Crow were there and Joe Crow told him to  
14 take his car down the block and park it.

15 Barnaba said that 10 or 15 minutes later Joe  
16 Crow and Finnegan pulled up alongside in a black Cadillac  
17 convertible and handed him a package through the window.  
18 He said he took it back to the animal hospital and put it  
19 in the back room, where he asked Forbrick about a black man  
20 and a white woman whom he had seen in the other room. He  
21 said Forbrick told him they were okay and introduced the  
22 man as Jimmy from Washington.

23 Barnaba testified that the sixth transaction  
24 took place a little later in November, 1970, when Forbrick  
25 told him he needed a quarter of heroin. He said he told

2 o'clock and walked around to the back of the house, where  
3 he saw Gigi, Joe Crow and Finnegan standing. He said tha  
4 Finnegan handed him a brown package, which he then delive  
5 to Forbrick at the animal hospital.

6 However, on cross-examination, he remembered  
7 testifying before the New York County Grand Jury that he  
8 only been involved in one transaction with Finnegan.  
9

10 Barnaba then testified to another transaction  
11 in December, 1970, when Forbrick asked him for an eighth of  
12 heroin. Barnaba said Forbrick gave him \$3500, which he  
13 gave to Gigi at the club, telling him that he needed an  
14 eighth. Barnaba said that when he went back to the club  
15 that night Gigi said he didn't have it, that Barnaba would  
16 have to come back the next night.

17 Barnaba said he came back every night or so for  
18 ten days and that Gigi still didn't have it. He said that  
19 at one of the times that Richie was worried about the money  
20 and wanted it back. He suggested to Gigi that he bring  
21 Forbrick to meet him so that Gigi could tell him not to  
22 worry.

23 According to Barnaba, Butch Mamone was also  
24 present at this conversation, and when Gigi said he didn't  
25 want to meet Forbrick, Butch Mamone said it was okay, that  
his wife knew Forbrick's wife.

2 Forbrick did go down to the club and Barnaba  
3 asked Gigi not to deal directly with Forbrick, but, rather,  
4 go through Barnaba. Gigi replied, "All right, don't worry  
5 about it."

6 Barnaba admitted, however, on cross-examination,  
7 to having told his questioners the night he was arrested  
8 that he did nothing in narcotics in 1970.

9 Finally, Forbrick told Barnaba that he wanted  
10 his money back and that he relayed this request to Gigi.  
11 He said that Gigi immediately agreed to return the money  
12 and returned a bag to Barnaba, Gigi saying, "It's the same  
13 money, I never touched it."

14 Barnaba said he then delivered the bag to  
15 Forbrick.

16 Barnaba testified about another narcotics trans-  
17 action at the animal hospital where a man and a woman came  
18 there. The woman drove up, the man was on crutches.  
19 The man on crutches picked up the bag and put it in his  
20 crutch and left. Barnaba then said that that man was Paul  
21 Gregorio.

22 Barnaba said he was told by Forbrick that night  
23 that the man was Paulie the Arrow. He testified that the  
24 summer following this incident that the defendant Pugliese  
25 told him that he had shot Paulie the Arrow in the knee

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2 because the Arrow was a customer of his and owed him  
3 money.

4 The next transaction was in May of 1971. At  
5 that time Barnaba testified he was working as a used car  
6 salesman at Jimmy's Used Cars on Boston Road and Gunhill  
7 Road, that he was visited by a black man named Burke who  
8 said he needed an eighth and that Forbrick had sent him.  
9 Barnaba said that he called Forbrick, who confirmed the  
10 fact. He said that he told Burke to return the next day  
11 with \$3000 and he would let him know.

12 He went down to see Gigi, who told him he didn't  
13 have an eighth, but would give him an ounce of pure and three  
14 ounces of mannite to make an eighth for \$2000. Barnaba  
15 agreed, and the next day he got the \$3000 from Burke and  
16 gave \$2000 to Gigi. He said that Gigi gave him a bag with  
17 two packages in it which he took and mixed together in his  
18 bathroom. He said he delivered this to Burke the next day  
19 by putting it in one of the cars on the lot and pointing the  
20 car out to Burke.

21 Barnaba testified that a few days later he was  
22 told by Jimmy, the owner of the lot, that two men had come  
23 looking for him and put a gun to Jimmy's head trying to find  
24 out where he was.

25 Barnaba said he went home and called Burke at

2 a motel. Burke said the package Barnaba had given him was  
3 no good and he wanted his money back. Barnaba said he  
4 asked Burke where the package was, and Burke said he  
5 had thrown it down the toilet, to which Barnaba replied,  
6 "You own it, that's it."

7 Barnaba said a few days later Burke showed up  
8 at his house looking for him while he wasn't home and that  
9 Barnaba moved his wife and children for a few days as a  
10 result.

11 Barnaba said he went to Gigi about the problem.  
12 Gigi said there was nothing he could do.

13 Barnaba testified that at one of the times he  
14 was talking to Gigi about this in July or August, Butch  
15 Mamone overheard the conversation and said he knew Burke,  
16 that Burke was a customer of his who owed him \$25,000 or  
17 \$30,000. Barnaba said that Mamone offered to try and  
18 straighten it out and he said that he had Burke's phone  
19 number.

20 Barnaba said a few days later he had an appointment  
21 with Mamone at the club, at which Mamone said that he had  
22 straightened it out with Burke by telling him to deduct the  
23 money from the amount he owed Mamone, that Barnaba now  
24 owed Mamone the money. Barnaba said he never paid Mamone.

25 On cross-examination Barnaba said he never bought

2 narcotics from Mamone, that he had no personal knowledge of  
3 Mamone purchasing or possessing narcotics.

4 Barnaba testified in July or August, 1971, he  
5 met Butch Pugliese outside the Beach Rose Social Club.  
6 He said Pugliese, whom he had seen a few times before,  
7 asked him how he was doing and he said, "Not too good.  
8 Is there anything you can do?"

9 He said Pugliese told him to meet him at Izzy's  
10 Luncheonette at Buhre Avenue and Westchester Avenue the  
11 next day.

12 He met him there and Pugliese drove him to the  
13 house of a friend of his named Hank, and Barnaba was  
14 introduced to Hank. Barnaba described the house as being  
15 on the service road of the New England Expressway near  
16 233rd Street. He identified defendant Springer as Hank.  
17 He said that Butch told Hank that if he needed anything  
18 from then on to get it from Barnaba. Barnaba said Hank  
19 didn't have a phone, so he gave Hank his phone number.

20 On cross-examination Barnaba remembered telling  
21 Agent Torrey Shutes that he met Hank in August of 1970 and  
22 he said that, in fact, he did meet him then. On redirect  
23 examination, however, he said that it was August of 1971.

24 Barnaba said within the next day or two he and  
25 Butch Pugliese had another meeting at Izzy's and that Butch

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2 then introduced him to Patty and Harry, who we now know to  
3 be Pat Dilacio and Harry Pannirello, and told Patty if  
4 Barnaba needed anything he should give it to him on con-  
5 signment.

6 Barnaba said that he and Patty exchanged telephone  
7 numbers and also agreed on a price of \$25,000 per kilo.

8 Barnaba said that a few nights later Hank called  
9 and they met and Hank asked for an eighth. Barnaba told  
10 him the price would be \$3500. Barnaba then called Patty  
11 and arrangements were made to deliver a package to Barnaba.  
12 Barnaba, in turn, brought the package to Hank's house and  
13 Hank paid him \$3500. He said the next night he gave \$3000  
14 to Patty and kept \$500 for himself.

15 Barnaba testified that Pugliese introduced him  
16 to certain other people during this time. One of the  
17 people he met was Joe Sharp, and that Butch told him that  
18 he could put goods in Joe Sharp's house, but he should give  
19 Joe Sharp a hundred dollars for every eighth he sold.  
20 Barnaba said he had Joe Sharp's phone number, but not his  
21 address.

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2 Barnaba said a few days later he saw  
3 Butch Pugliese at Izzy's luncheonette and that Butch tried  
4 to introduce him to Frank Russo, but that he said he  
5 already knew Russo.

6 Barnaba told us that Russo said he needed  
7 an eighth and that they agreed to meet at Tardi's in  
8 the Bronx at 9 that night. He said that the same  
9 evening he and Butch Pugliese met at Izzy's about 8.  
10 About 8:45 Butch told him to meet him down on the ser-  
11 vice road of the Bruckner Boulevard in about five minutes.  
12 When they met Butch handed Barnaba a package containing  
13 an eighth, which Barnaba then delivered to Frank Russo -  
14 at Tardi's.

15 Barnaba said he then went back to Izzy's  
16 and waited until about 10 and then Butch and he drove  
17 them to the Tremont Diner on Tremont Avenue where they  
18 met Russo, and Russo pulled \$3000 out of his sock and  
19 gave it to Butch.

20 On cross examination of Barnaba he admitted  
21 he never looked in the bag which he delivered to Russo.  
22 He also said that when questioned by Frank Rogers at the  
23 time of his arrest about people he had dealt, he did not  
24 mention Frank Russo's name.

25 Barnaba said that in September or October,

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2 1971 he worked about three weeks as a construction worker  
3 on 47th Street and Fifth Avenue, where Butch Pugliese  
4 was shop steward. On cross examination he said  
5 that Pugliese had paid for his union book.

6 Barnaba also testified to another meeting  
7 with Butch Pugliese, Patty and Harry at Izzy's luncheon-  
8 ette. As a result of this meeting four eighths  
9 were delivered to Barnaba.

10 Barnaba then called Joe Sharp, he testi-  
11 fied, and met him on a street in the Bronx. He said  
12 he gave Joe the package and said that Joe told him to  
13 call him if he needed anything and that they would meet  
14 on that block, that he didn't want Barnaba coming to  
15 his house.

16 Barnaba said that during October and November  
17 he heard from Hank on three different occasions. He  
18 said that each time Hank bought an eighth for \$3500.  
19 He said that Hank would call him and that he would then  
20 go to Hank's house, take the order, call Joe Sharp and  
21 meet him, and that Joe would give him the eighth which  
22 he would bring back to Hank's house and collect the money.  
23 Barnaba said on each occasion he gave Joe Sharp \$100.

24 Barnaba testified in November, 1971 he met  
25 Patty and Harry and that they drove to Tremont Avenue

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2 where Harry parked and got out saying that he would  
3 be back. He said he saw Harry go over to someone  
4 he knew as Sinatra on the sidewalk. Barnaba identi-  
5 fied the defendant John Gamba as being Sinatra.

6 He said that when Harry came back they  
7 drove over to the George Washington Bridge to New Jersey  
8 and after about 10 to 15 minutes pulled into a Howard  
9 Johnson's Motel, where Harry got out and handed a package  
10 to two black men who were in a car with Washington  
11 plates.

12 Barnaba testified that in October, 1971 he  
13 was at the Cottage Inn with Butch Pugliese and when  
14 they walked in Butch said Joe DiNapoli owned the joint  
15 and he was partners with him. Barnaba said he asked  
16 about Butch if they were partners in the joint too and  
17 Butch said no, everything but the joint.

18 On cross examination Barnaba admitted that  
19 he never mentioned this in his own handwritten notes  
20 or in his debriefing with Agent Torrey Shutes.

21 Barnaba then testified about a party at  
22 Butch's house off Westchester Avenue the night before  
23 Butch went away. He said that Joe Sharp, Sinatra,  
24 Harry Pannirello, Patty Dilacio were there. He said  
25 Butch Pugliese asked him what he thought of Sinatra as a

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2 stash, and he said he didn't know.

3 Barnaba said in December, 1971 he was at  
4 Patty Dilacio's to ask Patty if he had any more goods  
5 and that Patty said he did not, that he had seen Joe  
6 DiNapoli and Joe had told him no, and he was trying to  
7 see his partner, Butch Mamone.

8 The next witness after John Barnaba was  
9 Albert Logan, the special agent with the Drug Enforce-  
10 ment Administration.

11 Agent Logan testified he met Thomas (Ten-  
12 nessee) Dawson in Washington, D.C. and in January, 1973  
13 he and Dawson went to a motel in New Jersey where he  
14 was introduced to a Harry Pannirello and a John Pan-  
15 nirello. Logan told us at this meeting Harry Pen-  
16 nirello asked Dawson to help him collect the \$20,000  
17 that was owed him by a man named Allen.

18 Finally, the agent testified that he made pur-  
19 chases of narcotics from Harry Pannirello, the narcotics  
20 being delivered to him by Jimmy Provitera.

21 This Harry Pannirello, the man who sold nar-  
22 cotics to Agent Logan, was the next witness.

23 Harry Pannirello testified in March of 1970,  
24 he told Frank (Butch) Pugliese that he needed money  
25 and didn't care how he earned it.

Later that month Harry met Butch at a restaur  
ant in the Bronx and Harry agreed to stash narcotics for  
Pugliese. As a result of this agreement Harry took  
seven one-eighth packages of heroin to his home in New  
Jersey. Two to three weeks after taking these nar-  
cotics home Harry made his first delivery. He took  
one of the packages to Butch Pugliese and was paid \$200.

In another two or three weeks Harry made  
a second delivery. He took two of the eighths and  
met Butch Pugliese in the Bronx. Butch Pugliese took  
Harry to Hattie Ware's apartment, according to Harry  
Pannirello, where he met Basil Hansen, Bunny and Hattie  
Ware. Harry put a brown paper bag with the two  
eighths of heroin on the coffee table and Basil and  
Pugliese went into the bedroom.

Leaving Hattie Ware's apartment Butch Pugliese  
took Harry to Al Greene's apartment, which was in the  
same building. Pugliese told Al Greene from now on  
Harry would be making all the deliveries to him. The  
second delivery Harry was paid \$200.

All of the four eighths remaining from the  
seven eighths that Harry had originally stashed were  
delivered to Butch Pugliese, approximately three weeks  
after the second delivery. Harry was not paid for

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2 the delivery, but Harry was later given \$1000 worth  
3 of fireworks by Pugliese. Pugliese told Harry that the  
4 the defendant Joseph DiNapoli was his partner in drugs.

5 In June of 1971, Harry said he drove Pugliese  
6 to DiNapoli's girlfriend's house on Bronxdale Avenue  
7 where Pugliese delivered about eight to ten thousand  
8 dollars worth of cash, leaving it on a coffee table.  
9 Harry said that DiNapoli started counting the money, then  
10 pushed it aside. However, Harry Pannirello was at  
11 first unable to identify Joseph DiNapoli in court, though  
12 the next day Harry returned and did identify DiNapoli.

13 On cross examination Harry Pannirello said  
14 that he originally told federal agents that the house  
15 was on Randall Avenue and not on Bronxdale Avenue.

16 During the same month as this trip to DiNapoli's  
17 girlfriend's house Pugliese also introduced Harry to a  
18 man named Hank, who was identified as the defendant  
19 John Springer. Pugliese told Harry that Hank and Paulie  
20 the Arrow were partners in narcotics.

21 The following month, July, 1971, Harry met  
22 Pugliese twice at the Jersey shore, the first time had  
23 a brief conversation about narcotics and the second time  
24 Pugliese introduced Harry to Pat Dilacio.

25 That same summer, in August, 1971, Pugliese,

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2 introduced Harry to Thomas (Tennessee) Dawson. That  
3 meeting took place during a heroin delivery that was made  
4 to Tennessee Dawson.

5 Also, at about this time Pugliese introduced  
6 Harry to John Barnaba. Barnaba and Pugliese boasted  
7 to Harry that they had ripped off someone for \$5000  
8 by delivering them bad narcotics.

9 During the fall of 1971 Harry Pannirello  
10 made one delivery of narcotics for Pugliese. He  
11 claimed he made three or four deliveries to Al Greene  
12 and three or four deliveries to Basil at Hattie Ware's  
13 apartment. Harry also said he delivered to Thomas  
14 (Tennessee) Dawson, who knew Pugliese by the name of  
15 Georgie.

16 In October of 1971 Pugliese was going to  
17 jail and he made arrangements for Harry and Pat Dilacio  
18 to take over his narcotics business. Pugliese gave  
19 Pannirello some phone numbers, those of Tennessee Dawson,  
20 Al Greene, Hattie Ware and Pat Dilacio. Pugliese  
21 allegedly also gave Pat Dilacio some phone numbers,  
22 including that of Joseph DiNapoli.

23 Pugliese, according to Pannirello, said that  
24 Dilacio was to pick up narcotics from DiNapoli and Harry  
25 was to deliver these narcotics to their customers.

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8                   After selling this half kilo of heroin to  
9 Tennessee, Harry and Dilacio had four and a half kilos  
10 left, of which a half kilo went to Barnaba and allegedly  
11 the rest went to Basil and Al Greene.       The delivery  
12 to Basil was made at Hattie Ware's apartment and Hattie  
13 Ware was present.       Pannirello also testified to  
14 once delivering a half kilo of heroin directly to Hattie  
15 Ware saying that it was for Basil.

When the two kilos that Pugliese had left  
were gone, Patty Dilacio, according to Pannirello,  
arranged to purchase one kilo from Joseph DiNapoli.  
They stashed it at the house of a man named Sinatra.  
Sinatra was identified by Harry Pannirello as the defendant  
John Gamba, and Harry said that Pugliese had told  
him that he, Pugliese, had used Sinatra as a stash before.

24 Pannirello claimed that Sinatra was paid  
25 \$300 a week for four to five months for acting as the

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2 Stash.

3 The stashed kilo was sold half to Tennessee  
4 Dawson and the rest to Basil and Al Greene. Apparently  
5 when this kilo was gone, according to Harry Pannirello,  
6 Pat Dilacio allegedly tried to make another purchase  
7 from Joseph DiNapoli, but they were unsuccessful in  
8 several attempts and finally got narcotics from Carmine  
9 Pugliese. According to Harry Pannirello, they again  
10 stashed these narcotics at Sinatra's and sold a whole  
11 kilo of them to the defendant Warren Robinson, who was  
12 called Allen.

13 Harry Pannirello also testified to a conver-  
14 sation with Butch Ware, the defendant William Alonzo,  
15 in which Butch Ware said he wanted to get rolling, so  
16 Harry gave him two ounces of heroin for \$2000. Butch  
17 Ware paid \$1500 or \$1600 and Harry asked Hattie Ware to  
18 collect the rest of the money when Butch Ware had it.

19 Harry also told us on four or five occasions  
20 he paid Hattie Ware \$100 to \$150 because he was using  
21 her apartment for the deals with Basil Hansen.

22 Harry Pannirello testified that he and Dilacio  
23 then purchased three more kilos from Carmine Pugliese.  
24 These three kilos had a strong odor of vinegar.

25 They sold a half kilo of these narcotics to

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2 Allen, the defendant Warren Robinson. None of their  
3 other customers wanted the odoriferous narcotics, smelly  
4 narcotics, and they returned the vinegar-smelling nar-  
5 cotics to Carmine Pugliese.

6 In the spring of 1972 Harry Pannirello  
7 testified he also had a narcotics transaction with the  
8 defendant Frank Russo. According to Pannirello,  
9 Dilacio and Russo and himself met and agreed on a price.  
10 However, according to Pannirello, Russo said that the  
11 guy he was giving it to didn't want to pay the price and  
12 he gave the narcotics back to Pannirello.

13 In November, 1972 Harry Pannirello had  
14 arranged another transaction with Allen, Warren Robinson.  
15 They were to meet at a Howard Johnson's in New Jersey.  
16

17 Harry and Jimmy Provitera were waiting for  
18 Allen when a man came over, according to Pannirello,  
19 and introduced himself as Salley. This man told Harry  
20 that Allen wasn't there yet.

21 Allen arrived after, gave Harry money and  
22 arranged for delivery the next night.

23 On the witness stand Pannirello was unable  
24 to identify the person he met that night as Salley.

25 Pannirello's testimony ended with a descrip-  
tion of three sales to Agent Logan, who was known to

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2 Pannirello as Al and had been introduced to him by  
3 Tennessee Dawson. The sales to Agent Logan led to  
4 Pannirello's arrest and ended his narcotics activities.

5 I think it is time for another break.

6 All right, ladies and gentlemen, why don't  
7 you go out.

8 (The jury left the courtroom.)

9 THE COURT: We will take 10 minutes.

10 MRS. ROSNER: Your Honor, I have an appear-  
11 ance before Judge Wyatt at 4:30, which I take it I will  
12 not be able to keep.

13 THE COURT: I doubt it.

14 MRS. ROSNER: I would ask one of your-  
15 Honor's law secretaries, or perhaps Mr. Dilberian, to  
16 call Judge Wyatt and explain.

17 THE COURT: Yes.

18 MR. RICHMAN: Your Honor, will you be going  
19 back over the testimony of certain persons you already  
20 alluded to?

21 THE COURT: I am not going to go back over  
22 all of it, no.

23 MR. RICHMAN: For example, you failed to  
24 mention the discussion --

25 MRS. ROSNER: The judge said he will go

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2 back and do the contentions.

3 THE COURT: You are going to end up with  
4 an exception to it anyway, it doesn't matter.

5 MR. RICHMAN: I just asked.

6 MR. KING: Judge, may I be heard?

7 You made a reference to a conversation Mr.

8 Barnaba and Mr. Pugliese about Gamba being the stash.

9 I think as long as you mention that, I respectfully  
10 submit you should have told the jury that on pages 1551  
11 and -2 I specifically asked Mr. Barnaba whether there  
12 had been any narcotic transactions between him and John  
13 Gamba, and his answer was no, and that is on pages 1551  
14 and 1552 of the record.

15 I respectfully ask your Honor to remind  
16 the jury of that.

17 THE COURT: I can't hit every question  
18 and answer, Mr. King. I am doing the best I can.

19 (Recess.)

20

21

22

23

24

25

(Jury present.)

THE COURT: In my summary of the evidence we are getting to that point, ladies and gentlemen where I believe the evidence is more clearly in your minds as the next group of witnesses testified a relatively short period ago.

You will recall Thomas (Tennessee) Dawson, who was the next witness. Dawson testified he had various narcotic dealings with Warren Robinson, with Paulie the Arrow, Paul Gregorio, and with a person who Paulie the Arrow introduced him to as Georgie. Dawson identified Georgie as the defendant Frank Pugliese.

Dawson also testified to his narcotic dealings with Harry Pannirello. On one occasion Dawson said that he met Pannirello at a New Jersey Howard Johnson and it was shortly thereafter that he stopped coming up to New Jersey.

The following witness was a man by the name of Salvatore Spataro, who told us that about two and a half years ago he rented his garage to the defendant Frank Pugliese for six or seven months and that Pugliese kept things in that garage which are the normal tools and instruments of a bricklayer, bricks, a motor, mixing things, a box and tools.

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The next witness was a man by the name of Stanley Blasof, who was a forensic chemist, and he testified that the powder contained in the packages which Agent Logan had had delivered to him by Pasquale (Jimmy) Provitera, the substance in those packages was in his opinion heroin hydrochloride.

The next witness was Pasquale (Jimmy) Provitera. Pasquale (Jimmy) Provitera testified to being the delivery boy for Harry Pannirello. He told how Harry introduced him to Pat Dilacio, he told how Harry had him deliver various packages to certain defendants and to others who are not defendants in this case.

Provitera testified that he went to an apartment house on University Avenue a number of times and that he went to Hattie Ware's apartment there a number of times to make deliveries to Basil.

He indicated that at one time he met Pat Dilacio at Hattie Ware's apartment and that he, Provitera, gave Dilacio a package and Dilacio gave the package to Hattie Ware and asked Hattie Ware to take the package to Al Greene. Provitera testified that at that time Dilacio gave Hattie Ware some money.

Provitera testified how he was picking up

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2 certain packages from a man named Sinatra and he  
3 identified the person he knew as Sinatra as the defendant  
4 John Gamba.

5 Provitera testified as to deliveries to Allen  
6 and also to Henry Salley, and he identified Henry Salley.  
7 He told about the delivery in Salley's room in a motel,  
8 Howard Johnson's Motel, over on Route 46.

9 Then Provitera testified as to his deliveries  
10 to a man by the name of Al, a man whom he later learned  
11 was Special Agent Al Logan.

12 The next witness was a Mr. Finn, who is the  
13 agent-operator of a building at 424 West 57th Street,  
14 Manhattan. He testified about placing the name Rizzo  
15 on a bell. You will recall that during the cross  
16 examination Mr. Finn was presented with a document which  
17 is an exhibit here, the lease dated February 1, 1973.

18 Mr. Finn stated it was not clear in his mind  
19 when he put the name Rizzo on the bell, but he thought  
20 that ordinarily it would have to be on or about February  
21 1, 1973.

22 The next witness was Mrs. Patalano. Mrs.  
23 Patalano told us that she was the common law wife of the  
24 defendant Joseph DiNapoli.

25 She was shown a diagram of the living room

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2 at 1908 Bronxdale Avenue and she made changes in the  
3 diagram. Those changes, as I recall it, were marked  
4 in red on that exhibit, and the exhibit was shown to you.

5 Mrs. Patalano said that there were five or  
6 six other homes, houses, on Bronxdale Avenue which were  
7 substantially similar to the house at 1908 Bronxdale  
8 Avenue, but she testified that after June or July of 1971  
9 it was impossible to view the dining room from the living  
10 room.

11 The next witness called by the government  
12 was Joseph LaSalata. Joseph LaSalata testified that  
13 he had a nickname, Joe Sharp. He testified that  
14 he knew the defendant Frank Pugliese and that he rented  
15 his garage for the month of October, 1971 to Pugliese,  
16 who paid \$25 for the rental.

17 During the examination of Mr. LaSalata cer-  
18 tain questions were posed by the prosecution interrogat-  
19 ing the witness concerning conversations which LaSalata  
20 supposedly had with a member of the United States attor-  
21 ney's staff. Remember what I said before. Questions  
22 are not evidence, no matter what form they take.  
23 And of course the credibility that you must judge is the  
24 credibility of the witness.

25 LaSalata told us about delivering certain

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2 packages to a man he knew as John. They had been stored  
3 in the garage and he wanted to get rid of them so that  
4 he could rent the garage to somebody else. He  
5 claimed that as far as he knew the packages contained  
6 football tickets.

7 Mrs. LaSalata was next called and she  
8 testified that she saw this box with some packages in  
9 the garage, that after telling her husband about it she  
10 had no occasion to go into the garage any more.

11 The next witness was Milton Starr, who is  
12 another real estate agent. His management responsibilities  
13 during 1971 and '72 included being the agent for  
14 1380 University Avenue in the Bronx. He testified  
15 that the name Greene was associated with apartment 7D  
16 of that building.

17 The next witness was an Agent Arthur Carter  
18 who said that he called a telephone number and asked for  
19 a Basil. He was told that Basil was not there and he  
20 said he would call back a few hours later.

21 Carter called the number again and was talking  
22 with someone on the telephone when finally the phone  
23 was slammed down.

24 We then had an Agent John Nolan, who testified  
25 that he had given Agent Carter that phone number

1 jha6

2 and it corresponded to one in an address book that he  
3 had taken from Hattie Ware.

4 Nolan also testified he went to an apartment  
5 at 150 West 225th Street, where he found Estelle Hansen,  
6 Bunny, present, that he took some pictures, telephone  
7 bills addressed to Hattie Ware at that address on 225th  
8 Street.

9 He also testified that he had shown Harry  
10 Pannirello a group of photographs and asked Pannirello  
11 if he recognized anyone. Nolan stated that Pannirello  
12 indicated that one photograph was Joseph DiNapoli, but  
13 Nolan admitted on cross examination that he made no  
14 memorandum of any kind with respect to this out-of-  
15 court identification.

16 The next witness was Agent Fred Moore, who  
17 testified as to his surveillance on Jimmy Provitera,  
18 Harry Pannirello and John Pannirello.

19 The next witness was Sergeant Martin O'Boyle,  
20 who was recalled. Sergeant O'Boyle testified that  
21 on the evening of December 3, 1973 he went to an apart-  
22 ment at 3139 New England Thruway with three other law  
23 enforcement officers. He said he entered the apartment  
24 building right away and that he went up to the second  
25 floor, where he noticed an unidentified woman standing

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2 on the landing. He said that he identified himself  
3 to this woman. The woman opened the door to an apart-  
4 ment and spoke to the defendant John Springer and then  
5 closed the door.

6 While the door was open Sergeant O'Boyle claim-  
7 that he looked up at a angle and saw John Springer  
8 standing behind a wooden table or a wooden table-like  
9 structure on which there was some tin foil and what  
10 appeared to be a white powder.

11 Sergeant O'Boyle testified as to arresting  
12 John Springer in that apartment and he testified that  
13 he ordered that the items from this table-like or counter  
14 top to be seized.

15 Now, I permitted this evidence to come into  
16 this trial for a very, very, very, very limited pur-  
17 pose. It has nothing to do with the conspiracy here.  
18 It is not binding on any other person, any alleged member  
19 of any alleged conspiracy. Even if you find a con-  
20 spiracy to exist, this cannot be binding on it. It  
21 was admitted solely as to the defendant Springer, not  
22 in proof even of the one substantive count in which he  
23 is named. Rather, this evidence is to be considered  
24 by you solely on the issue of whether the defendant  
25 Springer intended to distribute narcotics as alleged in

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2 the substantive count.

3                   The next witness called by the government  
4 was Albert Casella. Detective Casella testified  
5 that at or about 8:30 on January 5th he went with John  
6 Barnaba, both working in an undercover capacity, to the  
7 house of Frank Monaco. He said that he met Frank Russo  
8 there and that he, Barnaba, Monaco and Russo had a  
9 conversation in which he told -- he, Casella -- told Russo  
10 that he wanted a half a kilo of heroin. Russo  
11 allegedly said that the price would be nineteen-five.

12                   There was some dickering thereafter the  
13 price and quality, but according to Casella, Russo on  
14 that night took a small tin foil packet from his  
15 boot and gave it to him as a sample. Casella then  
16 identified a particular government exhibit as being that  
17 sample.

18                   Casella testified about how he returned to  
19 Frank Monaco's house on January 9th, that he was carrying  
20 \$20,000 with him which he had gotten from Sergeant  
21 O'Boyle earlier that night.

22                   Casella said that Russo said that they would  
23 do it the following night, and according to Casella they  
24 discussed plans to meet the following night in the  
25 Korvette's parking lot on Bruckner Boulevard.

2 Casella testified that the next night he w  
3 in John Barnaba's car to that parking lot and saw  
4 Russo's car. He testified that he got into Russo's  
5 car and had a conversation with Russo.

6 Finally, according to Casella, Russo told  
7 Casella to pick up a brown paper bag, and Casella did.  
8 According to Casella, that brown paper bag and its contents  
9 are contained in Government's Exhibit 91B.

10 Casella testified that he had another  
11 meeting at Frank Monaco's house in which Barnaba, Monaco,  
12 the defendant Russo that the stuff he had bought on January  
13 10th was very weak and asked him if he could straighten it out.  
14 Russo said he didn't know.

15 Russo, according to Casella, went with  
16 Casella and Barnaba on January 22nd and Russo took a small  
17 brown paper bag from his coat and handed it to Casella.  
18 Casella identified Government's Exhibit 92C as the contents  
19 of, the paper bag that Russo gave him that evening.

20 Now, we were told that there was a stipula-  
21 tion that if a New York City Police Department chemist  
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2 came he would testify that he examined the contents of  
3 these three exhibits that I have last referred to and  
4 that he found therein a substance containing heroin hydro-  
5 chloride.

6 Casella also testified that he went to the  
7 apartment with Sergeant Martin O'Boyle on December, 1973,  
8 the apartment at 3139 New England Thruway. You  
9 may recall that Detective Casella could not identify  
10 John Springer as the occupant of that apartment, but through  
11 him certain items, certain exhibits were admitted.  
12 These items are Exhibits 92 through 97.

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4B 2 There also is a stipulation concerning these  
3 items that if they were opened and a chemist was called  
4 the chemist would testify that they contain the following:

5 5/8 of an ounce and 37 grains of mannite  
6 4 foil packets containing 20 grains of a substance, which  
7 substance contains heroin hydrochloride, 1 foil packet  
8 containing half an ounce plus 27 grains of a substance  
9 which also contains heroin, 1 foil packet containing 1/3  
10 of an ounce and 47 grains of a substance which contained  
11 cocaine, another foil packet containing 11 grains of a  
12 substance which contained cocaine, and the following items  
13 in which no controlled substance or narcotic was found,  
14 a paper packet labeled mannite, a foil-covered plate,  
15 an empty foil packet and 2 measuring spoons.

16 We come now I believe to the last two government  
17 witnesses on its direct case. George F. Reilly was one.  
18 You will recall he is a police officer.

19 You may recall that he testified on February 3  
20 that he was surveilling a house located at 1908 Bronxdale  
21 Avenue. He stated that approximately at 8.45 p.m. he  
22 observed a small green car pull up and two men go into  
23 1908 Bronxdale Avenue. One of the men was carrying a suit-  
24 case. That man was identified as Joseph Di Napoli.  
25 The other man was identified by Officer Reilly as Vincent

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2 Papa.

3 Thereafter, according to Officer Reilly's testi-  
4 mony, about 9.30 he saw Joseph Di Napoli carrying a suitcase  
5 with two hands out of the house at 1908 Bronxdale Avenue  
6 to the car in which he had arrived. He saw Di Napoli  
7 put the suitcase in the back of the car and then Mr. Di  
8 Napoli and Mr. Papa both got in the car and drove away.

9 Officer Reilly testified that he and others  
10 followed the car and eventually stopped it. Officer  
11 Reilly stated that he had observed the suitcase after it  
12 had been taken from the car. He said that the suitcase was  
13 taken to the offices of the Joint Task Force, where he and  
14 other law-enforcement people counted the money that was  
15 found in the suitcase, which amounted to \$967,450.

16 He said that the defendant Joseph Di Napoli and  
17 the person Vincent Papa as well as the car they were driving  
18 that night were searched and that no narcotics were found  
19 anywhere there. He said that he went back to 1908 Bronxdale  
20 Avenue later that night and that no narcotics were found  
21 there.

22 The next witness called by the government was  
23 Peter Pallatroni, who testified that he was a group super-  
24 visor at the Drug Enforcement Administration.  
25

Pallatroni testified to being in the area of

1 hp3

2 1908 Bronxdale Avenue on February 3, 1972. He testified  
3 he followed the car carrying Vincent Papa and Joseph  
4 Di Napoli and was on the scene when that car was stopped.  
5 he testified that he saw the suitcase on the sidewalk with  
6 a Detective Spurdis looking into it. Pallatroni said that  
7 it was all full of money and took custody of it.

8 Now, Agent Pallatroni said that he put the  
9 suitcase in the trunk of the car that he was driving back  
10 to the headquarters of the Task Force. Officer Reilly  
11 testified that the suitcase was not, but it was placed in  
12 the back seat. Anyway, Pallatroni testified that he  
13 assisted other law-enforcement personnel in counting the  
14 money.

15 He also testified that no narcotics were found  
16 in the car driven or that was carrying Vincent Papa and  
17 Joseph Di Napoli that night that no narcotics were found  
18 on their persons; and that he assisted in the search of the  
19 Bronxdale Avenue house on that night and that to the best  
20 of his knowledge no narcotics were found there either.

21 Now, that brings us to the defense case. As  
22 such, I am going to suggest that we take another break.  
23 Then I want to tell you about the defense case.

24 (Jury left the courtroom.)

25 THE COURT: Let's take ten minutes and then we

1 hp4

2 will finish the defense case.

3 MR. POLLAK: May I make a statement for the  
4 record first?

5 With respect to the defendant Henry Salley, I  
6 believe your Honor misstated the testimony of the witness  
7 Provitera to a substantial degree, creating a great deal of  
8 prejudice. There were two misstatements, one that there  
9 were deliveries, plural, to Henry Salley, when in fact the  
10 testimony was that there had been one delivery, and secondly,  
11 that a delivery had been made in the motel room, when both  
12 Pannirello and Provitera testified that no narcotics were  
13 present in that alleged motel room conversation, there was  
14 only discussion and Alan passing money, and that neither  
15 Salley nor Robinson received narcotics in the motel room.

16 Under the circumstances I would move for a  
17 mistrial based upon the fact that this creates substantial  
18 prejudice to my client.

19 THE COURT: All right. It's denied.

20 (Recess.)

21 (Jury present.)

22 THE COURT: The defendants rely generally on the  
23 presumption of innocence, as is their right. They attack  
24 the credibility of the government witnesses. They point  
25 to the inconsistencies in the testimony of the government

1 hp5

2 witnesses. In sum, the defendants contend that the testi-  
3 mony of the main government witnesses, the self-styled  
4 accomplices, is false and induced by their own self-  
5 interest in connection with charges pending against them  
6 or which could be brought against them. Remember what I  
7 told you this morning about weighing the testimony of such  
8 people.

9 The defendants point to the criminal records of  
10 the government witnesses, they point to the inconsistencies  
11 not only in the testimony here of the witnesses, but  
12 inconsistencies in their testimony and in prior state-  
13 ments that they made. Finally, they pointed out incon-  
14 sistencies between the testimony of one witness and another.

15 Some defendants also called witnesses on their  
16 own behalf. The defendant Henry Salley contends that he  
17 was not present in New Jersey either alone or with Warren  
18 Robinson at any time that drugs were negotiated, delivered  
19 or paid for. He denies that he even met either Harry  
20 Pannirello or Pasquale Jimmy Provitera at any time prior to  
21 the time that they took the stand at this trial.

22 You will remember that Henry Salley took the  
23 stand in his own defense. He testified he was retired on  
24 disability from the railroad and that he also got a pension  
25 from the Army. He said that before he retired from

1 hp6

2 the railroad he had been a baggage and mail handler at Union  
3 Station in Washington, D.C.

4 He told us that he had fought in Korea in 1951  
5 and '52 and that he had received three combat stars, an  
6 infantry badge and a Purple Heart for being wounded in  
7 combat.

8 He explained that in addition to drawing retire-  
9 ment pay from the railroad and the Army he did part-  
10 time interior decorating and that he had done some interior  
11 decorating in a store owned by Warren Robinson.

12 He testified he knew Tennessee Dawson and Warren  
13 Robinson, but that he had never seen any of the other  
14 defendants in this case before this trial.

15 He said that he came on two occasions to New York  
16 with Warren Robinson to buy clothes for Warren Robinson's  
17 store. He said at one time it was in May. He remembered  
18 because it was the soft ball season and that he used to  
19 sponsor a soft ball team. He stated he remembered  
20 another time before Christmas cause Warren Robinson wanted  
21 to stock up for the Christmas shopping season. He said that  
22 both times they stopped only once on the way up and once  
23 on the way back to get gas.

24 He said he had never dealt in narcotics or been  
25 convicted of a crime and he told us that his wife worked

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2 for the Metropolitan Police down in Washington, D.C.

3  
4 He told us that his mailing address was 260  
5 15th Street, Southeast, Washington, D.C., which was where  
6 his father lived.

7 He was asked on cross-examination whether he had  
8 ever been convicted of selling a controlled Schedule II  
9 substance in a State Court in Virginia. He said he had been  
10 arrested and charged with a misdemeanor for bringing another  
11 man down to a drugstore in Richmond.

12 The government then offered in evidence a copy  
13 of a conviction of a Henry Salley, who gave his address as  
14 260 15th Street, Washington, D.C. The conviction was for  
15 obtaining or selling Preludin, a controlled Schedule II  
16 substance.

17 I tell you ladies and gentlemen that has nothing  
18 to do with this case. The only thing you can consider  
19 that on is credibility, the credibility of Henry Salley.  
20 It has nothing to do in any other way with this case.

21 On redirect Mr. Salley explained that Preludin  
22 is a diet pill and that he went to Richmond to buy diet pills  
23 for a friend of his by the name of Butch who weighed over  
24 300 pounds.

25 He told us his education ended in the 8th grade,  
when he dropped out of school and went to work, and that

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2 he went into the Army when he was 17 years old.

3 He told us that he had talked to his sister  
4 during the luncheon break and that it refreshed his  
5 memory that he had taken one more trip from Washington to  
6 New York in 1972, or to the New York area in 1972. He  
7 told us that his father had died on October 25, 1972, and  
8 introduced into evidence certain memorial cards indicating  
9 that his father had died on that date.

10 He told us that he went into a state of shock  
11 after the passing of his father and that he and a girl took  
12 a ride and stayed at some Howard Johnson motel overnight,  
13 but that he didn't remember which one.

14 Let's turn to the defense contentions of Hattie  
15 Ware. Hattie Ware contends that she is 34 years old and  
16 resides at 1380 University Avenue. She contends that she  
17 is presently employed as the secretary to the president of  
18 the Carver Federal Savings Bank, that she supports an  
19 adopted child.

20 She also relies on the presumption of innocence,  
21 by which she contends that she had absolutely nothing to do  
22 with any of the narcotics transactions of any alleged co-  
23 conspirators.

24 She contends that the pictures introduced by  
25 the government show her at purely social affairs and have

1 hp9

2 absolutely nothing to do with any of the alleged narcotics  
3 transactions.

4 Hattie Ware called two witnesses. Livingston  
5 Wingate was the first, and he testified that he had been a  
6 lawyer since 1949, that he was Executive Director of the  
7 New York Urban League since 1968.

8 He explained that the Urban League is a volunteer  
9 organization addressed to the areas of health, housing,  
10 education and employment in the City. He said that the  
11 Urban League sponsors several events, including the Whitne  
12 y. Young Football Game in Yankee Stadium each fall.

13 Mr. Livingston testified that he had known Hattie  
14 Ware since she began working for the Urban League the latter  
15 part of 1968. He explained that during her four years  
16 there she worked in several capacities, first as administr  
17 tive assistant to the Comptroller for a year and a half or  
18 more, then as administrative assistant to the Deputy  
19 Executive Director for a couple of years, and finally as  
20 administrative assistant to a program director.

21 He told us that she handled large sums of money  
22 when she was administrative assistant to the Comptroller,  
23 mainly because the football game sponsored by the Urban  
24 League grossed about \$450,000. He testified that none  
25 of this money was ever found missing, that Mrs. Ware was

1 hp10

2 completely trustworthy.

3 He said that he had discussed her reputation with  
4 other members of the Urban League and that her reputation  
5 for truth and for being a law-abiding citizen was ex-  
6 cellent.

7 He said that he also discussed her reputation  
8 at the Urban League after she had been arrested in this  
9 case and that no one had changed their opinion of her.

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5A   2                   He indicated that he had not discussed Mrs.  
3                   Ware's reputation in the community around 1380 University  
4                   Avenue, but he said that he talked about her with people  
5                   outside of the Urban League, such as the businessmen in  
6                   the community, and that they all felt the same way that  
7                   the people did at the Urban League.

8                   Mrs. Ware also called Patricia Williams, who  
9                   stated that she was a registered nurse who worked for the  
10                   Department of Public Health and she had been a nurse for  
11                   ten years. She said that she has known Hattie Ware for six  
12                   years and that from 1963 to 1971 she lived at 1380 Universit  
13                   Avenue in the Bronx when Hattie Ware was living there, too.

14                   She told us that in March, 1971, Hattie Ware  
15                   took her, Patricia Williams, out for her birthday and they  
16                   went to a nightclub where the Temptations were playing.  
17                   Hence, she identified two photographs that were taken that  
18                   evening, Government's Exhibits 69 and 70. In the photo-  
19                   graphs she recognized herself, Hattie Ware, Basil and  
20                   Estelle Hansen and another couple that she met only that  
21                   night when they came to the table and she had not seen them  
22                   since.

23                   She said she knew Basil and Estelle Hansen and  
24                   that Estelle was Hattie's niece and had a key to her apart-  
25                   ment. She told us about Mrs. Ware's present employment

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2 with the Federal Carver Bank where she is a secretary to the  
3 president.

11 On cross-examination she told us that her mother  
12 still lives at 1380 University Avenue, that she knew an 11  
13 Greene, who lived on the 7th floor of that building, that  
14 she used to see Basil and Bunny Hansen and Butch Ware at  
15 Hattie's apartment. She said that Butch Ware had stayed  
16 there for a while.

18 She named a nightclub that the pictures had been  
19 taken at as the Copacabana, and she said that Hattie was  
treating her for her birthday.

21 She identified several photographs of Basil and  
22 Bunny, but said she could not remember the name of the  
23 other couple she met that night. She stated that she knew  
24 Ware to be Hattie Ware's married name, and although her  
25 brother at times was called Butch Ware, his real name was  
William Alonzo.

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2 Before going any further, I must tell you some  
3 thing about the law of character evidence or reputation  
4 evidence, which it probably is.

5 Where a defendant has offered evidence of good  
6 general reputation for truth and veracity, or honesty and  
7 integrity, or as a law-abiding citizen, you ladies and  
8 gentlemen should consider such evidence along with all  
9 other evidence in the case.

10 Evidence of a defendant's reputation for truth  
11 and veracity or honesty and integrity or as a law-abiding  
12 citizen may be sufficient for you to consider these traits  
13 of character.

14 Thus, evidence of a defendant's reputation  
15 inconsistent with those traits of character ordinarily  
16 involved in the commission of the crime charged may give  
17 rise to a reasonable doubt since you may think that it is  
18 improbable that a person of good character will commit such  
19 a crime.

20 Let me go on to the defendant Tolopka.

21 As I indicated before in the charge today, the  
22 defendant Tolopka has put forth a complete defense, a defense  
23 of alibi. Of course, he relies on the presumption of  
24 innocence, as he should. But more than that, he claims  
25 he could not have been where the witness who testified

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2 against him said he was.

3 He also relies on character evidence which he  
4 claims also can completely prove his innocence.

5 Benjamin Tolopka took the stand as the first  
6 witness in his own behalf. Mr. Tolopka testified that he  
7 was 55 years old, that he had been married for 35 years,  
8 that he had two grown children. He also told us that he  
9 lived in the Bronx with his wife, that he joined the Police  
10 Department in 1942, became a detective in 1946 and retired  
11 in 1966. During his 23-1/2 years on the Police Force,  
12 Mr. Tolopka received 41 commendations.

13 After retiring from the Police Department, Mr.  
14 Tolopka received a pension which he said is \$7400-plus a  
15 year. Mr. Tolopka also went to work at Yonkers Raceway  
16 and he told us that he has a tax number to sell jewelry.

17 Tolopka then described the layout of the house  
18 he lives in and stated that to reach the stairs to the  
19 basement one would have to pass through a number of vesti-  
20 bules after entering the house.

21 Mr. Tolopka also said that he had seen John  
22 Barnaba testifying and that he knew John Barnaba, but  
23 by the name John Bonneville. Mr. Tolopka said that he had  
24 met John Barnaba about 1967 in up-state New York. Tolopka  
25 claims that the next time he saw Barnaba was in <sup>April</sup> August of

1 tp5

2 1970 when he went to a used car lot in his neighborhood to  
3 get an old car while his car was having the wiring fixed.  
4 Tolopka said at this used car lot he was introduced to  
5 John Barnaba, that he did not at the time remember having  
6 met the same man a few years earlier.

7 Barnaba allegedly told Tolopka he would get him  
8 a car, and two days later Barnaba allegedly went to Tolopka's  
9 house and told Tolopka that he found a nice car, but he  
10 needed \$300. Tolopka said that he gave Barnaba the money,  
11 but that Barnaba never came back with the car.

12 Tolopka testified the next time he saw Barnaba  
13 was in November of 1970, when he came by the car lot.  
14 Tolopka said that they argued, threw punches, and Barnaba  
15 eventually gave him back the \$300 while allegedly screaming  
16 that he would get even for it.

17 According to Tolopka's testimony, Tolopka and  
18 Barnaba saw each other sometimes in the neighborhood, but  
19 they did not speak again until the summer of 1971, when  
20 Barnaba went to the racetrack and apologized to Tolopka.  
21 Tolopka said that Barnaba told him he didn't intentionally  
22 try to beat Tolopka, but that some kidnappers were after  
23 him and he had to go to California.

24 Tolopka testified that after this apology he  
25 saw Barnaba a few times on the lot, but he never socialized

2 with him. Tolopka then said in May or June of 1973, Barnaba  
3 went to his house to get a wristwatch for his daughter's  
4 graduation, but Tolopka said he told Barnaba that he couldn't  
5 go downtown and get the watch immediately because his wife  
6 had had a stroke. According to Tolopka's testimony, this  
7 was the last time that he saw Barnaba prior to this case.  
8 He testified he never had narcotic transactions with Barnaba  
9 and that Barnaba was never in his basement.

10 Mr. Tolopka stated that in the evening hours of  
11 the latter part of August, he was either working at the  
12 racetrack or was up-state at his daughter's house in the  
13 country. Mr. Tolopka also said that he works at the race-  
14 track for one week and then goes to the country the following  
15 week.

16 According to Mr. Tolopka, in August of 1970, he  
17 also finished his work week on a Saturday night, and he  
18 would go home, go to bed until early Sunday morning, when  
19 he would pick up the rolls, buns and a newspaper and drive  
20 up-state to his daughter's home.

21 Mr. Tolopka then concluded his direct examination  
22 by stating that he never saw or never spoke to any of the  
23 defendants in this case prior to the date he was arrested  
24 on the charge for which he is now on trial.

25 On cross-examination, Mr. Tolopka stated that

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2 as a police detective he had investigated narcotics cases  
3 and had narcotics arrests which involved both heroin and  
4 cocaine. He testified in 1970 he had \$30,000 or \$40,000  
5 in the bank, that his top salary as a detective was around  
6 \$13,000, that his pension was \$7400 and that in 1970 he  
7 had stocks worth approximately \$15,000.

8 Mr. Tolopka also testified that in 1951 he paid  
9 about \$11,500 in cash for the house he now lives in. Also  
10 in 1970 and 1971, according to Mr. Tolopka, he earned a  
11 couple of hundred dollars from jewelry sales, but did not  
12 report that money on his tax return because he figured  
13 the expenses and getting the jewelry cancelled out what he  
14 had earned. Mr. Tolopka placed in evidence his tax returns  
15 for 1971 and 1972.

16 On cross-examination Mr. Tolopka stated that in  
17 1968 or 1969, one of his neighbors introduced him to Richard  
18 Forbrick, but that to the best of Mr. Tolopka's recollection  
19 he didn't see Richard Forbrick at the animal hospital until  
20 1971.

21 Though Mr. Tolopka had previously stated that he  
22 did not know the other defendants in the case, he was  
23 shown the indictment and Richard Forbrick is listed as a  
24 defendant.

25 Mr. Tolopka stated that he worked at the race-

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2 track by choice and further stated that to the best of his  
3 recollection he also worked with a partner.

4 He was also questioned about his trip to the  
5 used car lot when he said that he met John Bonneville.  
6 Tolopka said that a Mr. Fair, the owner of Fair Motors,  
7 introduced him to John Barnaba at the used car lot.  
8 Mr. Fair allegedly told Tolopka that Barnaba got good used  
9 cars.

10 The second witness called on behalf of the  
11 defendant Tolopka was his wife, Bertha Tolopka.

12 Mrs. Tolopka told us that she married Benjamin  
13 Tolopka in 1939, that they have two children. Mrs. Tolopka  
14 then stated in May of 1973 she had a stroke and a heart  
15 attack and that she had been incapacitated since.

16 She testified that her husband worked as a  
17 security officer at Yonkers Racetrack. She says when her  
18 husband is working at the racetrack he leaves home around  
19 20 minutes to 5 and returns about 11.30 or 12 o'clock.

20 Mrs. Tolopka also said that during the month of August while  
21 her husband <sup>is not</sup> working at the track he is up-state with  
22 her. To the best of her recollection, her husband never  
23 stayed in the City an extra day.

24 Mrs. Tolopka concluded her testimony by stating  
25 that she would not lie for her husband.

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2 The next witness called on behalf of Benjamin  
3 Tolopka was John Stasio. Mr. Stasio told us that he had  
4 been Mr. Tolopka's friend and neighbor for some 18 years.  
5 He told us by way of background that he is a mechanic in  
6 the movie industry and he is married and has two children.

Mr. Stasic was asked about Tolopka's reputation for truth and veracity. In response to this question he stated that Mr. Tolopka was a good neighbor and had a wonderful reputation.

19 Mr. Stasio then stated that one could see into both his  
20 basement and Mr. Tolopka's basement from the outside of their  
21 respective homes.

On cross-examination Mr. Stasio stated that  
Richard Forbrick was a good friend of his, that he had seen  
John Barnaba ~~at~~ several times at the animal hospital, but  
did not know him personally. Stasio said that he had

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2       breakfast with Richard Forbrick and that Benjamin Tolopka  
3       had joined them several times.

4                   Mr. Tolopka's daughter, Patricia Ann Puchalski,  
5       was the next witness called in his defense. Mrs. Puchalski  
6       testified that she is married and owns a house in up-state  
7       New York which she bought for \$3300 in 1965. Mrs. Puchalski  
8       stated that her parents spend the summer with her, usually  
9       opening the country house in May and staying until October.

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2 She stated that during the summer her father  
3 works at the race track one week on and one week off,  
4 that he finishes work on Saturday and drives upstate  
5 early Sunday, usually arriving at 9 or 10 a.m. with a  
6 newspaper, the buns and rolls. She remembered no  
7 time in the last four or five years that her father  
8 varied from this routine.

9 Frank Malerba was the next witness called by  
10 Ben Tolopka. Mr. Malerba testified that he is pre-  
11 sently working as a supervisor of agents and security  
12 officers at Yonkers Race Track. He had records from  
13 the race track and went through those records and said  
14 that they indicated that Benjamin Tolopka worked one  
15 week on and one week off during the period from August  
16 and October of 1970. According to his testimony,  
17 Tolopka always worked with a partner and always worked  
18 the 6-to-12 tour.

19 He said that Mr. Tolopka was an early man who  
20 usually arrived at the track at 5 p.m. and left not be-  
21 - fore 11:30 or 12.

Before working at the Yonkers Race Track Mr. Malerba was a New York City police officer and in that position had known Benjamin Tolopka since 1948. When asked about Tolopka's reputation he replied that

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2 Tolopka was an honest man and one of the most highly  
3 decorated officers on the police force.

4 The final witness called on behalf of Benjamin  
5 Tolopka was John T. Mullins. Mr. Mullins testified  
6 that he is a confidential investigator with the staff  
7 of the New York State Attorney General. He also  
8 told us that he had known Benjamin Tolopka for 40 years  
9 and worked with him when they were both police officers  
10 assigned to the 28th Precinct.

11 When asked about Tolopka's reputation for  
12 honesty, Mr. Mullins stated that it was nothing but the  
13 finest.

14 The defendant Joseph Ceriale contends that  
15 the only testimony against him came from Frank Stasi,  
16 who had called him Joe Red and told the investigators  
17 that he, Stasi, had known Joe Red for a couple of  
18 years and that Joe Red, from whom he assertedly purchased  
19 mannite, had red hair.

20 The defendant Ceriale claims that he was  
21 never known as Joe Red, that he never had red hair, or  
22 even tinted hair, his hair has always been brown or  
23 as it is now, gray, and that Stasi admitted knowing him  
24 in his testimony for 10 years, not for a couple of years.

25 All of these inconsistencies in Stasi's testi-

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2 mony, Ceriale contends, make proof beyond a reasonable  
3 doubt impossible.

4 Ceriale also partially relies on good charac-  
5 ter, his good character at his working place.

6 On behalf of the defendant Joseph Ceriale  
7 Ralph Sanchez took the stand. He testified that he  
8 worked for the New York City Housing and Development  
9 Administration, the Emergency Repair Program of that  
10 group, that he is now the executive administrative  
11 assistant for personnel.

12 He said that Mr. Ceriale also works for the  
13 Housing and Development Administration, that he is a  
14 senior repair crew chief with the East Harlem workshop  
15 of the Emergency Repair Program, and that his job con-  
16 sists of going out and making emergency repairs.

17 Mr. Sanchez testified that from November 1,  
18 1971 through March 30, 1972 he and Mr. Ceriale were both  
19 connected with the Model Cities Program, which is part  
20 of the Housing and Development Administration, and that  
21 he, Mr. Sanchez, had been Mr. Ceriale's supervisor.  
22 He told us that now and back then Mr. Ceriale had a  
23 good attendance record. He testified that had never  
24 seen Joseph Ceriale with red hair or with hair that  
25 was tinted red and that he had never heard him called

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2 Joe Red.

3 On cross examination he said he did not  
4 know where Mr. Ceriale lived or where he spent his  
5 lunch hour. He explained that he would dispatch  
6 Mr. Ceriale to a job and would not follow him. He  
7 said that the Model Cities area covered both the East  
8 and West Side between Cathedral and the East River, be-  
9 tween 110th and 135th Streets. He said he knew Mr.  
10 Ceriale only by that name.

11 Mr. Ceriale's next witness was Frank Cermak,  
12 who said that he was the superintendent at the Washburn  
13 Wire Company, where he had worked for 37 years. He  
14 testified that Mr. Ceriale worked there from about 1966  
15 to the latter part of 1970, holding several jobs, and  
16 that he, Mr. Cermak, was Mr. Ceriale's supervisor.  
17 He said his attendance record was very good, that he  
18 worked a great deal of overtime, that he was a hard  
19 worker. He explained that Mr. Ceriale worked rotating  
20 shifts and that he, Mr. Cermak, would see Mr. Ceriale  
21 on two of the shifts, but not on the shift that  
22 started near midnight. He said he never saw Mr. Ceriale  
23 with red hair or with hair tinted red, and that he never  
24 heard him called Joe Red.

25 On cross examination he told us that the

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2 Washburn Wire Company is located on the FDR Drive between  
3 116th Street and 119th Street. He stated the workers  
4 there get 20 minutes on the job to eat and do not leave  
5 the plant. He explained that Mr. Ceriale worked the  
6 night shift from 11 p.m. to 7 a.m. every third week  
7 and the other two weeks he worked the day shift from  
8 7 a.m. to 3 p.m. and the afternoon shift from 3 to 11.

9 Mr. Ceriale's last witness was Richard  
10 Moliterna, who said he was trained as a plasterer, but  
11 for the last 19 years had been employed as the  
12 secretary-treasurer of the union of plasterers, Local  
13 No. 10. He testified that he first met Mr. Ceriale  
14 on the job where he was working at the Metropolitan  
15 Museum in 1951 or 1952 when Mr. Ceriale was an apprentice,  
16 and that Mr. Ceriale subsequently joined the union as  
17 a full member and continued as a member until 1969.

18 He said that when Mr. Ceriale was a member  
19 of the union he used to see him three or four times a  
20 year, that he never saw him with red hair nor with hair  
21 tinted red, nor did he ever hear him called Joe Red or  
22 hear of him being called Joe Red.

23 In addition to these witnesses, the defendant  
24 also offered an exhibit marked A, copy of his Army  
25 discharge, which indicates that his hair at the time of

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2 discharge was brown.

15 The defendant DiNapoli also relies on the  
16 presumption of innocence and contends that the witnesses  
17 against him are lacking credibility. DiNapoli contends  
18 that you must have a reasonable doubt as far as he is  
19 concerned. The almost \$1 million which was admitted  
20 into evidence at this trial, DiNapoli contends, was not  
21 in any way associated with narcotics. No drugs  
22 were ever found in the car where the money was seized,  
23 nor were any found on the persons of DiNapoli or Papa,  
24 nor were any found at 1503 Bronxdale Avenue.

Furthermore, the defendant contends that it

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2 has shown that DiNapoli was involved in shylocking on  
3 a fairly large scale, and the defense further contends  
4 that this money properly came from those shylocking  
5 operations.

6 He called a number of witnesses. He called  
7 Miss Denice B. Sabella, a private secretary to the  
8 vice president of an advertising firm. She testified  
9 that she visited 1903 Bronxdale Avenue with Anthony  
10 DiNapoli because it was his sister-in-law's birthday.  
11 She said that her sister-in-law, Jean DiNapoli, was  
12 living there at the time and she visited her on some  
13 holidays during 1971.

14 She said she remembered the inside of 1903  
15 Bronxdale Avenue and that it was not possible to see into  
16 the dining room from the living room. She explained  
17 that to get from the living room to the dining room you  
18 have to walk out of the living room, then go down a  
19 little hallway, make a left and walk into the dining room.  
20 She said that between the living room and the dining  
21 room there was a wall with a mural.

22 She identified Defendant's Exhibit D as a  
23 photograph of the house, identified Exhibits H, M and  
24 N as photographs of the interior.

25 She said that there were two sofas in the

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2 living room at 1908 Bronxdale Avenue arranged in an L-  
3 shape divided by a covered table. And she marked  
4 a diagram with a green pen to show where she remembered  
5 where the furniture was. She said there was a large  
6 closet between the dining room and the living room, but  
7 she didn't know what was in it.

8 Next we heard from Sylvester Malangone, the  
9 man who puts up the wallpaper, does painting, carpentry,  
10 plastering, electrical work, plumbing, and who admitted  
11 to being a general handy man.

12 He testified that he put up the mural on  
13 the living room wall at 1908 Bronxdale Avenue. He  
14 looked at Defendant's Exhibit O and said that that was  
15 a picture of the mural -- that is what they called the  
16 wallpaper, a mural -- that he had hung. He said he  
17 remembered doing the job in March of 1971 because he did  
18 it a week or two before his wife's 60th birthday.

19 The last defense witness called on behalf  
20 of Mr. DiNapoli was Joseph DiBenedetto. He testified  
21 that he lived at 1908 Bronxdale Avenue from 1963 to 1969,  
22 and when he moved out Joseph DiNapoli moved in. He  
23 identified Defendant's Exhibit D as 1908 Bronxdale  
24 Avenue and he said as you enter the house the parlor is  
25 on your left and that when he lived there you could walk

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2 straight through from the dining room to the living  
3 room.

4 He testified that he continued to go to the  
5 house after he moved out and that when he went there in  
6 March, 1971 the first floor had been changed by adding  
7 a panel in the foyer and a new partition with a closet  
8 between the dining room and the living room. He  
9 said that the living room side of the partition had  
10 gates and a mural on it and that the dining room side  
11 had a big closet. He explained that if you wanted to  
12 go from the living room to the dining room you had  
13 to come out of the living room, walk down a hallway and  
14 go into the dining room.

15 He testified that he often went to Bronxdale  
16 Avenue in 1971, that his business there was to deliver  
17 and collect money for Joseph DiNapoli as a shylock.  
18 He said he had \$200 a week in wages. He said he was  
19 indicted with Joseph DiNapoli and charged with conspiracy  
20 to violate the shylocking laws. They both pleaded  
21 guilty and were sentenced on January 4, 1973, DiBenedetto  
22 to two years and DiNapoli to three years.

23 He said as far as he knows that there was  
24 or were other people collecting money for Joseph DiNapoli  
25 and that he knew one by name, a David Whitner. He sai

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2           he would estimate DiNapoli's business as being very big  
3           and that at the sentencing he had heard the assistant  
4           United States attorney say that DiNapoli engaged in loan-  
5           sharking that involved hundreds of thousands of dollars.

6           He said that no mention was made of nar-  
7           cotics at that sentencing on January 4, 1973.

8           On cross examination DiBenedetto stated  
9           that during the period of 1969 to 1972 he also was legiti-  
10           mately employed as a bartender at the Cottage Inn Bar,  
11           a public bar on Van Ness Avenue in the Bronx, that as  
12           far as he knew no drug transactions ever took place  
13           there.

14           He testified that he saw Angelo Mamone there  
15           occasionally in 1970, 1971 and 1972, that he also saw  
16           Gigi Inglese during these years.     He told us that  
17           Joseph DiNapoli had introduced him, DiBenedetto, to  
18           Vincent Papa in 1969 or 1970, but that he did not often  
19           see DiNapoli with Papa.

20           The defendant Inglese also relies on the pre-  
21           sumption of innocence.    He contends that the testimony  
22           of the witnesses against him is totally unworthy of belief.  
23           He points to various inconsistencies within the testimony  
24           of the government witnesses taken either individually  
25           or collectively.

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2 As to Primrose Cadman, he contends that her  
3 testimony is totally incredible. As proof he called  
4 Joseph Zimbardo, the night bartender at Diane's Bar,  
5 where she had asserted she sold stolen clothing in return  
6 for money and heroin.

7 Joseph Zimbardo testified that he worked as a  
8 bartender at Diane's Bar. He said that he worked six  
9 days a week from about 5:30 p.m. until 1 or 2 in the morn-  
10 ing and altogether he worked there for about five years.  
11 He said the salary was \$10 a night plus tips.

12 Mr. Zimbardo testified that during the period  
13 beginning about December, 1968 a skinny English girl  
14 with brown hair used to come into Diane's Bar with  
15 clothing about once or twice a week. He said she  
16 didn't come <sup>every</sup> overnight, explaining that if she couldn't  
17 sell her clothes at Diane's Bar she would go to other  
18 places.

19 He described the bar as being 60 feet long  
20 and 12 feet wide. He said that he used to see Gigi  
21 there two or three times a week drinking, but that he  
22 never saw him have any conversation with the English  
23 girl, except to buy clothes from her perhaps five or six  
24 times in all, and that frequently other people in the  
25 bar bought things from her. He said that the most

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2 that Inglese paid her would be about \$60 to \$100  
3 based upon hearing her discuss the price of the items  
4 that Mr. Inglese might be interested in.

5 Mr. Zimbardo described the interior of the  
6 bar as having two bathrooms in the back and a kitchen  
7 with an open front onto the bar. He said that he knew  
8 Joe Crow, who sometimes but not always arrived with  
9 Mr. Inglese, and he said that neither Joe Crow nor  
10 Mr. Inglese had access to the kitchen and no one, to  
11 his knowledge, sold anything in the kitchen. He  
12 testified he never saw Joe Crow or Gigi handing the  
13 English girl a package of any kind.

14 He explained if people were talking in normal  
15 conversational tones of voice in his position from  
16 behind the bar he could hear their conversation. He  
17 said he never heard Joe Crow or Inglese say to the  
18 English girl anything in words or substance like "Let  
19 me know how the goods are," and that he never heard her  
20 say to either of them any words concerning narcotics.  
21 He said that he never saw anything but currency pass be-  
22 tween them.

23

24

25

2 On cross examination he stated that part  
3 of his job was to chase people out of the bar when  
4 they tried to sell things there, but he said he never  
5 chased the English girl because she was too pleasant and  
6 would walk in and would walk out.

7 He identified the defendant Donato Christian  
8 whom we know as also known as Finnegan, and said  
9 that he had seen him in Diane's Bar once in a while in  
10 1969 and '70, but that was not too often.

11 Defendant Mamone also relies upon the presumption  
12 of innocence and claims that the witnesses against  
13 him did not give credible evidence.

14 Defendant Mamone introduced business records  
15 which showed that he moved his household goods to Florida  
16 on May 25, 1973. He asks how could he be included in  
17 this alleged on-going conspiracy taking place in the  
18 Bronx when he had moved to Miami. In effect, he  
19 contends that his move shows that he was no part of the  
20 alleged conspiracy.

21 After the defendant's case the government  
22 put in a rebuttal case. Now, that rebuttal case must  
23 be sharp in your mind, so I will not go through it again.

24 In that connection, in this attempted summary  
25 of the evidence before you I have not tried to recall to

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2 your attention all of the testimony of all of the  
3 witnesses. I have not tried to point out to you how  
4 testimony of a particular witness might be corroborated  
5 by that of another witness, nor have I attempted  
6 to show how there are inconsistencies between the testi-  
7 mony of this witness and another witness. These are  
8 duties completely within your purview and I will not  
9 interfere with your province.

10 Now, you have heard a lot of comment by the  
11 lawyers here as to matters of law. Many of their con-  
12 tentions were wrong. For example, one lawyer told you  
13 about plea bargaining in New York State. His repre-  
14 sentation has nothing to do with what actually goes on.

15 You have also heard comments as to possible  
16 sentences. Let me tell you right now, you are the  
17 sole judges of the facts. These comments that were  
18 made by the lawyers as to the law, comments as to sen-  
19 tence, are none of your business. Do not burden your-  
20 self with more than just being judges of the facts.  
21 Matters of law are things that I am required to handle.  
22 The law which you need to know was given to you in this  
23 charge.

24 Now, all of the evidence must be considered  
25 by you. Once again, let me say when I tried to sum-

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2 marize the evidence I did not give all of the evidence,  
3 and I want to tell you, if through some inadvertence  
4 I misstated some evidence, as well I might, please,  
5 please, disregard any such statement by me that does not  
6 accord with your recollection of what the evidence  
7 was. I can't emphasize that too much. Always  
8 it is your recollection and yours alone that governs  
9 and you must unhesitatingly reject any statement of fact  
10 which I made which does not accord with your recollection

11 Let me remind you again, the government to  
12 prevail must prove with respect to each count the essen-  
13 tial elements beyond a reasonable doubt. I  
14 explained that already in these instructions. If it  
15 succeeds as to a particular count your verdict will  
16 be guilty. If it fails it must be not guilty.

17 You must consider each count separately and  
18 render a separate verdict as to each count. You must  
19 consider each defendant separately and render a  
20 separate verdict as to each defendant.

21 You may render a verdict of guilty on each  
22 count or a verdict of not guilty on each count or guilty  
23 on one, not guilty on some others, and so on. That is  
24 entirely within your province.

25 Since, however, there are a fair number of

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2 separate counts before you, I have attempted to devise  
3 two items which I hope will assist you in your delibera-  
4 tions.

5 First, I have taken a copy of the indictment  
6 from which I have excised, cut out, the counts that were  
7 severed.

8 Second, I have prepared a number of sheets  
9 on which I have listed the various counts and the defend-  
10 ants named in each count. Alongside each defendant  
11 there is a box for guilty or not guilty. You may mark  
12 these sheets. In rendering your verdict you may refer  
13 to these sheets.

14 On the conspiracy count I also want you to  
15 indicate, if you find a particular defendant guilty,  
16 whether he joined before or after May 1, 1971.

17 Now, there will be 12 of you on the jury set  
18 aside to deliberate. Those deliberations will begin  
19 only after you have some dinner. But the 12 people  
20 must arrive, if you are going to find a defendant guilty,  
21 at a unanimous verdict.

22 No one should enter upon the deliberations  
23 in the jury room with such pride of opinion that he would  
24 refuse to change it if convinced by intelligent argu-  
25 ments on the part of another juror or other jurors that

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2 they are right. However, you are not to do so in  
3 violence of your own well-founded opinion. You are  
4 entitled to that opinion. In other words, each one of  
5 you must decide this case for himself or herself after  
6 thoroughly reviewing the evidence and exchanging views  
7 with your fellow jurors.

8 Now, if you wish any of the exhibits they  
9 will be sent in to you. If you wish any of the testim  
10 read back to you that will be done.

11 In conclusion, however, I would like to say  
12 just this: This is an important case. Every  
13 criminal case is an important case. It is important  
14 to the government and you can see and you know it is im-  
15 portant to the defendants. Handle it as an important  
16 matter. Decide this case solely on the evidence and  
17 the law as I have charged it to you.

18 Now, I am going to excuse you and I am  
19 going to send you out to dinner. I don't want you to  
20 start your deliberations yet. You noticed, for example  
21 that I made a mistake this morning in reading the indict-  
22 ment to you, that I read a count that had been severed  
23 and you are not to take into account in any way. I  
24 made a mistake. I might have made others. If I did  
25 I am sure that my friends here in the well are going to

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2 tell me all about it and I would like the chance to  
3 correct it. So please, ladies and gentlemen, do not  
4 start deliberating until I give you the go ahead.

5 Mr. Marshal.

6 (The jury left the courtroom.)

7 MR. RICHMAN: Your Honor, I just want  
8 to make one point and it is a very major point. Your  
9 Honor in summarizing the testimony as to Benjamin  
10 Tolopka stated that Benjamin Tolopka went in the month  
11 of August, 1970 to see John Barnaba with reference to  
12 purchasing a car.

13 There has been no testimony at all and it has  
14 been our contention that Mr. Tolopka did not see Barnaba  
15 June, July, August, September and October of 1970, but  
16 in fact went in May, when his car motor burnt up.

17 I believe that was your Honor's intention,  
18 but there was an error in your Honor's statement.

19 THE COURT: I will admit that at times  
20 I am in error.

21 MR. CURRAN: On that point, your Honor,  
22 on the point just mentioned by Mr. Richman, I just  
23 wanted to say my recollection is that on direct Mr. Tolopka  
24 said May, on cross he said April or May --

25 THE COURT: April or May doesn't mean --

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2 MR. CURRAN: I was just saying that.

3 MR. RICHMAN: You said August.

4 THE COURT: If I said August I will correct  
5 it.

6 MR. RICHMAN: Thank you.

7 MR. LOPEZ: Your Honor, may we proceed down  
8 the indictment?

9 THE COURT: Sure.

10 MR. LOPEZ: Thank you, your Honor.

11 MR. EPSTEIN: Your Honor, at this time the  
12 defendant Carmine Tramunti takes the following exceptions  
13 to the court's charge:

14 First, as to the participation by others  
15 in the conspiracy, the defendant Tramunti contends the  
16 court's charge was in error in that while it is true an  
17 individual co-conspirator would not have to know the  
18 identity of the other individuals, he must know of the  
19 participation of others and the general role and the  
20 scope that the others play, and I cite Blumenthal vs.  
21 United States, 332 U.S.

22 Further, in considering whether an individual  
23 has actually joined a conspiracy I would contend that und  
24 United States vs. Stromberg the jury in passing upon the  
25 question of membership must only consider the acts, the

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2                   conduct and the deeds of the individuals so charged  
3                   and cannot consider the acts, conducts and statements  
4                   of other individuals unless and until such time the jury  
5                   has found that the individual whom they are considering  
6                   has in fact become a member of the conspiracy.

7                   The defendant Tramunti would take exception  
8                   to the court's reference to code words.      Code words  
9                   cannot provide proof of guilt and the defendant Tramunti  
10                  considers that the court's charge in this respect did  
11                  not sufficiently bring home to the jury the fact that  
12                  the question of code words as such cannot be used as a  
13                  substitution to find guilt beyond a reasonable doubt  
14                  where in fact such proof does not exist.

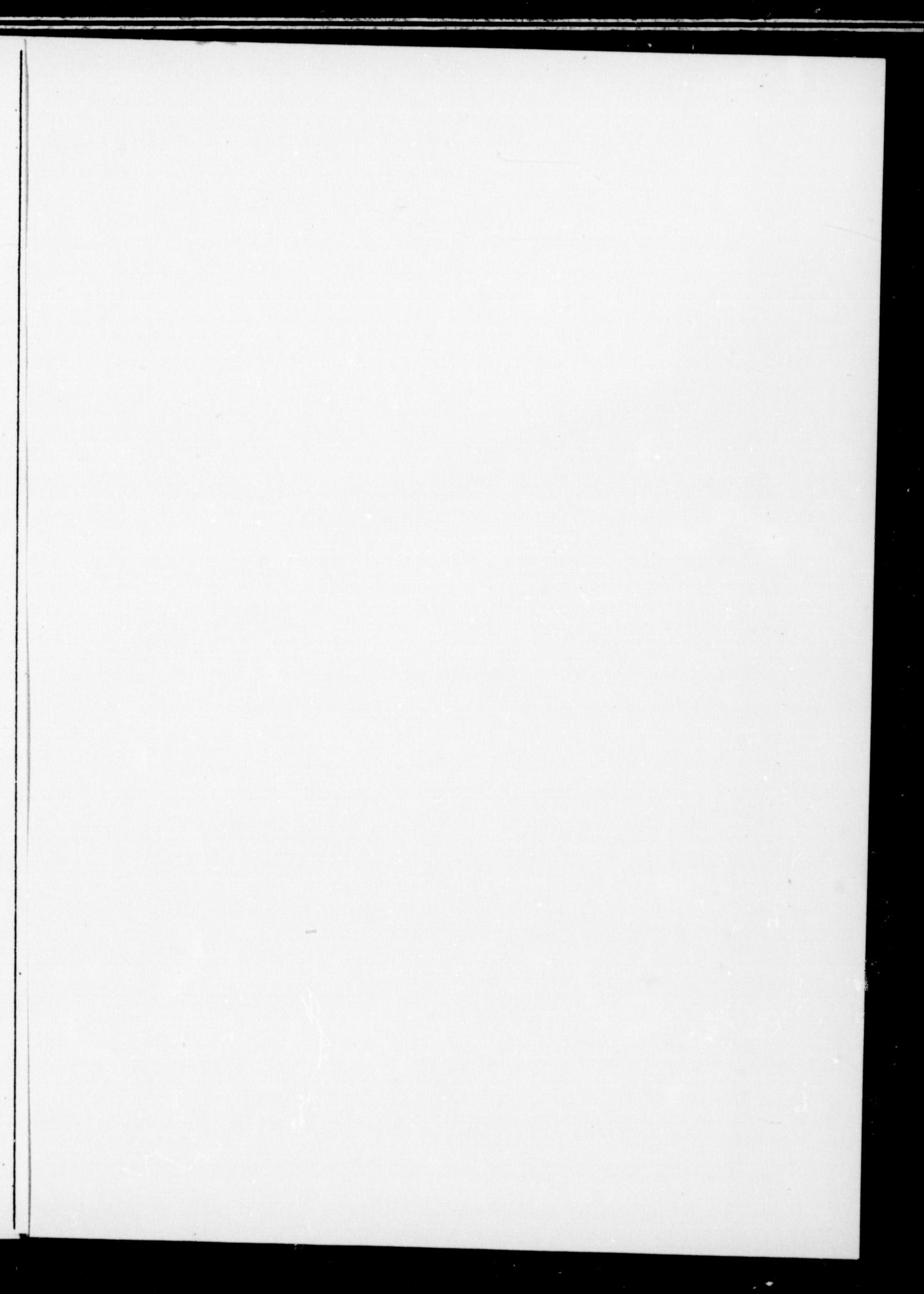
15                  As to the question of the overt acts, the  
16                  defendant Tramunti takes exception to the fact that the  
17                  court did not charge the jury as requested by the de-  
18                  fendant Tramunti that the overt act must be separate and  
19                  apart from the agreement itself and that the overt act  
20                  cannot be the agreement itself.

21                  The defendant Tramunti would also take excep-  
22                  tion to the court's charge on multiple conspiracies in  
23                  that the court failed to charge the jury that if the  
24                  jury does in fact find that there was only one conspiracy  
25                  based on the evidence in this case the jury must con-

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2 sider whether or not each of those conspiracies was  
3 operative by finding that a member of a conspiracy  
4 must have committed an overt act in furtherance of that  
5 conspiracy and that an overt act cannot be committed  
6 by any of the defendants on trial and be found to be  
7 in furtherance of the conspiracy unless they could find  
8 that that given individual was a member of the separate  
9 conspiracy which they presently have under considera-  
10 tion.

11 In addition to which the defendant Tramunti  
12 takes exception to the court's refusal to charge on the  
13 objects of a conspiracy as set forth in his supplemental  
14 request No. 1, that in so far as the court failed to  
15 instruct the jury that the jury must find based on the  
16 evidence in the case that in fact the word "goods" was  
17 used in the course of the conversation which allegedly  
18 occurred between the co-defendants Tramunti and Inglese  
19 at the Lo Piccolo, in addition to which that the word  
20 "goods" meant narcotics to the defendant Tramunti, that  
21 such a finding must be made on the evidence in the  
22 case by the jury, otherwise they are in fact trying the  
23 defendant Tramunti for a conspiracy that in effect encom-  
24 passes any and all illegal conduct or may very well  
25 encompass legal conduct by illegal means because it



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2 has not been properly brought home to them that they  
3 are only concerned with the function as to whether or  
4 not there was a conspiracy to possess with the intention  
5 to distribute narcotics.

6 Defendant Tramunti would also take exception  
7 to the court's refusal to charge multiple conspiracies  
8 as set out in his supplemental request No. 2.

9 The defendant Tramunti would further take  
10 exception to the court's refusal to charge as requested  
11 in his initial requests to charge concerning the theory  
12 that proof of a single act, so-called single act, so-called  
13 single transaction, is an insufficient basis upon which  
14 a jury could predicate a finding of guilt of participa-  
15 tion in a total conspiracy.

16 Defendant Tramunti would also take exception  
17 to the court's refusal to charge as set forth in  
18 his request No. 5 that one who merely provides goods is  
19 not necessarily a member of a conspiracy. In order  
20 to be found to be a member of a conspiracy the jury must  
21 find that in providing certain goods, if they do find  
22 that certain goods were provided by the defendant Tramunti,  
23 the evidence must also prove beyond a reasonable doubt  
24 that the one to whom the goods were provided was a member  
25 of a conspiracy and that furthermore the one who provided

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2 the goods was aware of the membership in the conspiracy  
3 on the part of the individual who was taking title to  
4 the goods.

5 The defendant Tramunti takes his final  
6 exception to the fact that the court refused to charge  
7 as set forth in request No. 7 that the state of mind of  
8 the witness Frank Stasi who testified on both cross  
9 examination as well as on rebuttal examination that he  
10 was afraid of the defendant Carmine Tramunti is a state-  
11 ment that the jury could only accept as a matter of  
12 explanation on the part of the witness Stasi as to the  
13 reason for the inconsistencies in his testimony and is  
14 not to be considered by the jury for the truth allegedly  
15 contained therein.

16 Thank you, your Honor.

17 MRS. ROSNER: Your Honor, although I  
18 recognize that the law in this circuit is as stated in  
19 United States v. Nuccio, I would object to your Honor's  
20 charge to the jury that once they find that a conspiracy  
21 did exist they may consider the acts and declarations  
22 of co-conspirators on the question of any individual's  
23 participation in the conspiracy.

24 I would also object to your Honor's charge  
25 under United States v. Kottekos in so far as you charged

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2 the jury that if they found that more than one conspiracy  
3 had been proved but one of the conspiracies was the one  
4 charged in the indictment they might still convict a de-  
5 fendant if he participated in that conspiracy charged  
6 in the indictment.

7 THE COURT: I must admit, Mrs. Rosner -- I  
8 just want to comment on that last exception that you made  
9 as to the one conspiracy or multiple conspiracy charge --  
10 some people have suggested that the proper charge  
11 is if you find more than the one conspiracy charged you  
12 must acquit all.

13 I considered that, and I understand there are  
14 reasons on both sides, and I just want to say that I did  
15 not give that particular charge lightly.

16 MRS. ROSNER: If I may just amplify the  
17 record in this regard, your Honor -- and I am not prone  
18 to be prolix whenever one is waiting for dinner -- the  
19 reason, your Honor, for not permitting the jury to con-  
20 vict where more than one conspiracy has been proved,  
21 particularly in this case, is the strong possibility  
22 of prejudice from the admission of otherwise inadmissible  
23 evidence, such as a million dollars. I would urge,  
24 your Honor, if there is any question that the jury  
25 be charged that if more than one conspiracy has been

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2 proved they must acquit.

3 MR. FISHER: If your Honor please, I  
4 join in all the exceptions and requests --

5 THE COURT: Wait a second. Everybody  
6 joins in everything.

7 MR. FISHER: Further, if your Honor please,  
8 to be brief, I except to that portion of the charge in  
9 so far as it failed to charge as requested in the various  
10 requests to charge.

11 THE COURT: Absolutely. You have an  
12 automatic exception on that one too.

13 MR. FISHER: Further, with regard to  
14 exceptions previously made, I renew them here.

15 In addition to those, if your Honor please,  
16 I believe the court failed to instruct this jury  
17 as I believe it must under United States v. Hernandez,  
18 Santore, Messia, the Second Circuit opinion, wherein it  
19 is a requirement that under the 174 conspiracy count  
20 there must be proof of the intent to deal in narcotics  
21 known to have been unlawfully imported into the United  
22 States under the conspiracy count, your Honor. I  
23 believe the court did not so instruct under count one.

24 Secondly, if your Honor please, a small point,  
25 perhaps, but significant to the aspirations of Mr.

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2 Christiano, when you mentioned that the witness Stasi  
3 had previously told the police that he had not mixed  
4 with Christiano you said twice previously. The record  
5 I know will reflect that it was three times previously  
6 he had denied mixing with Finnegan.

7 Further, your Honor, a very important conten-  
8 tion in this case has been the fact that the Beach Rose  
9 Social Club was used for gambling purposes, and there  
10 was no reference to that, as I recall, in your Honor's  
11 charge.

12 Penultimately, if your Honor will permit, the  
13 court seemed to overlook my brief but, I thought, pithy  
14 defense which consisted of some brief stipulations and  
15 the offer into evidence of the tape recorder and the  
16 implications to be drawn from that offer.

17 Finally, if your Honor please, we except to  
18 the marshaling of the evidence in that it totally  
19 failed, I respectfully submit, to recount to the jury  
20 the most important part of this defense, if your Honor  
21 please. Totally your Honor has failed to recite to  
22 the jury the incredible motivation of Stasi and Barnabas  
23 which was produced big as life here on tape.

24 MR. ELLIS: Your Honor, of course, I took  
25

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2 THE COURT: You all join. Don't worry  
3 about it. Don't repeat the ones you join in.

4 MR. ELLIS: Right. Your Honor, my  
5 principal exception is to the marshaling of the defense  
6 contentions with respect to those defendants that actually  
7 put on witnesses to the exclusion of those contentions  
8 relied upon in cross examination.

9 You went through great detail with each of  
10 the persons that took the stand and testified. The  
11 cornerstone of our defense was Stasi's testimony that  
12 the Beach Rose Social Club was a neighborhood place  
13 where all kinds of persons from the neighborhood went  
14 to gamble at those card games that started in the  
15 early afternoon and lasted to the late morning hours.  
16 That was not even mentioned.

17 We also brought out on cross examination  
18 that when Stasi arranged his cutting sessions at the  
19 Beach Rose club he did it surreptitiously to avoid  
20 enabling the other persons present at the club from  
21 hearing what was going on.

22 Without those inclusions in the marshaling  
23 the impression is created that here was an open and notor-  
24 ious narcotics factory and that anyone present must have  
25 known what was going on. That is not consistent with

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## 2 the evidence.

Finally, I request that your Honor instruct the jury that Barnaba testified that he did not know DiNapoli, did not know whether DiNapoli had a partner, and did not know whether Mamone was DiNapoli's partner, if anybody was.

24 MR. LOPEZ: Your Honor, I respectfully ask  
25 the court to charge the jury with regard to the stipula-

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2 tition entered into between the defendant DiNapoli and  
3 the government in connection with the dismissal of the  
4 magistrate's complaint resulting from the arrest of  
5 February 2, 1973. We think that it is highly signifi-  
6 cant as far as DiNapoli's defense is concerned.

7 Your Honor, I also would respectfully re-  
8 quest that your Honor charge this jury that Pannirello  
9 never claimed to have dealt in any narcotic transac-  
10 tions with DiNapoli.

11 I would also respectfully ask again to take  
12 exception to the court's failure to charge that there  
13 is no evidence whatsoever on this record that Shylocking  
14 and narcotics go hand in hand and has any reference to  
15 that million dollars, the narcotic aspects of the  
16 million dollars.

17 Your Honor, I would respectfully hope  
18 that the court would charge this jury, if it has not  
19 already done so, that the court has no legal opinion as  
20 to the guilt or innocence of any of the defendants charged  
21 under this indictment.

22 THE COURT: No legal opinion or factual?

23 MR. LOPEZ: No opinion.

24 THE COURT: No opinion, which happens to  
25 be true.

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2 MR. ROSENBERG: If your Honor please,  
3 with respect to the defendant Pugliese, as part of  
4 my defense I relied upon the cross examination of Pan-  
5 nirello and Barnaba wherein it was elicited that the  
6 alleged involvement with respect to those two witnesses  
7 and the defendant -- it was shown that on no occasion  
8 was this defendant given any money, and I relied upon  
9 that plus the presumption of innocence plus what was  
10 elicited with respect to Dawson and the supplemental bill  
11 of particulars.

12 For this court not to go into that -- that  
13 was the theory of my defense and essentially my entire  
14 defense -- I feel would be a great injustice to this  
15 defendant.

16 THE COURT: Is there anybody else?

17 MR. WARNER: Yes. Your Honor, only  
18 one point. Overt act No. 7 states that my client met  
19 with Moe Lentini outside a barbershop on Pleasant Avenue  
20 in or about May or June of 1971. I am sure it is an  
21 oversight of the court that your Honor is putting that  
22 in, because there was no testimony at any time during  
23 the trial that my client met with Moe Lentini and certain  
24 there was none as to a meeting outside the barbershop.

25 As a matter of fact, in the bill of particula

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2 Frank Stasi was supposed to be present and the purpose  
3 of that meeting allegedly in the bill of particulars was  
4 that Moe Lentini was introducing my client to Frank Stasi  
5 concerning the mannite. But the testimony was that  
6 it was Mr. Inglese that directed Stasi to my client.  
7 So there is no mention of that overt at all.

8 THE COURT: All right. You will notice,  
9 gentlemen, I am not denying anything.

10 I will tell you, I am so tired right now that  
11 the temptation is great to say they are all denied.

12 MR. ROSENBAUM: If your Honor please, with  
13 reference to the defendant D'Amico, in the very early  
14 part of your charge, your Honor, you gave as an example  
15 for terminating a conspiracy action by the police.  
16 I think that the jury may have reacted in an unfavorable  
17 way to the defendants in this matter and that police  
18 action automatically means that a conspiracy was in  
19 existence. It was the very early part of your charge,  
20 your Honor, where you made that statement.

21 In addition, if it please the court, with  
22 reference to defendant D'Amico, the basis of his defense,  
23 your Honor, was the inconsistencies of Stasi, his debrief-  
24 ing in the early part of May, 1973 and his testimony on  
25 trial and his later debriefing in June and July of '73,

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2 such as, specifically, initially in his debriefing he  
3 speaks of two ounces of heroin which he allegedly sold  
4 to defendant D'Amico which later becomes a quarter kilo  
5 of heroin.

6 In addition, your Honor, with reference to  
7 a meeting that allegedly took place at the Centaur Bar  
8 on May 30th the testimony of Officer Connelly was comple-  
9 ly inconsistent with that of the witness Stasi.

10 Furthermore, your Honor, the defendant D'Ami-  
11 relies very heavily upon the credibility of Mr. Stasi  
12 and I believe, your Honor, no mention was made as to  
13 the extent of his cocaine habit, which he said he only  
14 used down at bars, and his drinking habit, which also,  
15 of course, took place down at the bars.

16 Two other things, your Honor. With respect  
17 to the tapes of Officer Connelly, the tape recorder that  
18 he was using, and the fact that for three hours it did  
19 not function, that was an important point as far as the  
20 credibility of Officer Connelly.

21 Finally, your Honor, the dates of November,  
22 1972 in which a transaction allegedly occurred, although  
23 your Honor did charge the name Rizzo did not go on the  
24 doorbell until February, or ordinarily until February,  
25 1973, I believe in reference to the meeting that took

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2 place in Mr. D'Amico's apartment, which he did not have  
3 in November, 1972, that may not have been brought out  
4 clearly.

5 Thank you, your Honor.

6 THE COURT: I told you you all have excep-  
7 tions to factual matters. If I misstated a fact tell  
8 me about that.

9 MR. SIEGEL: Your Honor, I have a specific  
10 exception to your charge dealing with the seizure of  
11 the contraband from Mr. Springer on December 3, 1973  
12 and I, of course, would request a charge as outlined in  
13 U. S. v. Borelli dealing with prior inconsistent state-  
14 ments and the weight to be given to that. And  
15 also I would take exception to the factual charge dealing  
16 with John Springer in that it excluded most of the  
17 defense's case.

18 THE COURT: You got that.

19 MR. DOWD: Your Honor, in the first place,  
20 I think that there was a misstatement of fact with refer-  
21 ence to the testimony of John Barnaba. I think you  
22 mentioned an alleged meeting between Mr. Barnaba and Mr.  
23 Pugliese taking place in April, 1971. That may con-  
24 form to the indictment, but it doesn't conform to the  
25 evidence offered, which I think placed that meeting on

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2 direct examination in either July or August, 1971,  
3 and thereafter a series of events taking place, each  
4 within a few days, which placed the alleged trans-  
5 action, according to the testimony of John Barnaba,  
6 between my client and himself in September, 1971, and  
7 I think that is critical, because the way you stated it  
8 it conforms to the indictment of May, 1971. The direc-  
9 testimony and the consistent testimony of Mr. Barnaba  
10 was that that took place in September, 1971.

11 THE COURT: I will take a look at it.

12 MR. DOWD: I have a few more things.

13 I think a very important to be brought out,  
14 and I made it in my request's to charge, concerns the  
15 inconsistent statement of Pannirello, which he affirmed on  
16 the stand as being true at the time being made and  
17 as true now, that he had never talked to or met or made  
18 a deal with the defendant Frank Russo in the spring of  
19 1972, and I request the charge pursuant to U. S. v.  
20 Borelli and I thought at the very least it should have  
21 been mentioned. It was a critical matter to be  
22 stated in the contentions, because it puts the whole  
23 story at variance with the charge.

24 THE COURT: You mean the accusation?

25 MR. DOWD: The accusation.

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2 In addition, the business about count 26 I  
3 don't think has been clarified. It is obviously  
4 a dangerous area to go over again.

5 THE COURT: That is what I am afraid of.  
6 I don't want to prejudice your defendant, your client.

7 MR. DOWD: I submit that has already hap-  
8 pened.

9 My point is I think the jury is left with the  
10 impression that he is charged substantively with that  
11 January 10th transaction.

12 THE COURT: All right.

13 MR. DOWD: I ask your Honor to consider it  
14 during dinner.

15 THE COURT: I will see what I can work up.  
16 Is there somebody else?

17 Good. Can we all go to dinner?

18 MR. PHILLIPS: Your Honor, I have just one  
19 thing. With respect to the alternates, I take it  
20 your Honor is going to dismiss the alternates when  
21 they start deliberating.

22 THE COURT: That's your guess, but that is  
23 not necessarily what is going to happen.

24 MR. PHILLIPS: I raise the suggestion that  
25 perhaps it might be a wise idea to keep the alternates

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2 around in the unlikely event something should happen  
3 to one of the jurors. I know nothing has happened  
4 for six weeks, but something could happen, and we would  
5 end up with 11 jurors and not be able to reach a  
6 unanimous verdict.

7 THE COURT: That is not why I am keeping  
8 them.

9 (Dinner recess.)

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2 (8:45 p.m.)

3 (In open court; jury not present.)

4 THE COURT: One of the objections raised  
5 by counsel for the defense as to my charge I find to be  
6 proper and therefore I am going to restate it to the  
7 jury. I hope to be relatively short in the restate-  
8 ment.

9 MR. DOWD: Your Honor, could you inform us  
10 as to what the restatement concerns.

11 THE COURT: Yes. Someone caught me  
12 stating that the participation in a conspiracy, if you  
13 find one to exist, must be established by the independent  
14 evidence of each defendant's own acts, statements and  
15 conduct, as well as those of the alleged co-conspirators.

16 My understanding of the law is that you  
17 have to do it on his own acts, statements and conduct,  
18 without anything from the alleged co-conspirators.

19 Mr. Dowd, particularly as to you, I have tried  
20 to work out something which will tell the jury as to that  
21 one particular count which had been severed. I will  
22 be very honest with you.

23 I am fearful that if I go into great specifics  
24 I might end up prejudicing your client. For that  
25 reason I am denying your request, to which you have an

2 exception.

3 Now, as for the various -- this goes for every  
4 body -- as for the various errors which you tell me that  
5 I committed in my resume of the facts -- and I am not  
6 even sure that they are there -- I will once again charge  
7 the jury that it is their recollection, that they have  
8 the right to have the testimony read back, and that I  
9 may well have committed an error. I don't think that  
10 I can in all honesty go any further than doing just  
11 that.

12 As to those who raised those problems, you  
13 clearly have an exception, and there is no doubt about  
14 it. This goes particularly to Mr. Richman in behalf  
15 of Mr. Tolopka, to Mr. Ellis on behalf of his client,  
16 and to all others.

17 I have tried desperately to be fair in sum-  
18 marizing the evidence. If I made misstatements I am  
19 going to depend upon this jury being a hard-working  
20 group and therefore I hope that they have their own  
21 recollections. I know they do. I am going to try  
22 and make it as clear as possible for them that if I mis-  
23 stated something they are to ignore it.

24 MR. DOUD: Your Honor, if I may, one of my  
25 points I raised was not the misstatement. I take your

2 statement just now to certainly include the thing I  
3 missed about Barnaba and the date.

4 I would refer particularly now to the re-  
5 quest I had made in the form of a charge concerning  
6 Pannirello, because it comes four square within the  
7 ruling of Borelli with respect to a prior statement which  
8 is inconsistent, which he admitted on the stand on  
9 cross examination was true then and true now, namely,  
10 that he had testified to this alleged transaction in the  
11 spring of 1972 and testified to a conversation and a deal  
12 which he participated in himself and then admitted on  
13 cross examination that he had told the agents on tape  
14 that he had never talked to Frank Russo in respect to  
15 this and never dealt with him. It's not really a  
16 misstatement.

17 THE COURT: I understand. It is clear  
18 on the record.

19 Yes, Mr. Ellis.

20 MR. ELLIS: Your Honor, primarily what we  
21 were addressing ourselves to --

22 THE COURT: Was the Beach Rose Social Club.

23 MR. ELLIS: Yes, sir. That created a  
24 totally distorted impression of what went on at that  
25 club under this record and unduly emphasized the prosecu-

2 tion's evidence. I would think that at least for the  
3 sake of completeness your Honor would consider telling  
4 the jury that gambling went on there, that all kinds of  
5 people from the neighborhood went there to gamble,  
6 and that Namone was one of those, even though --

7 THE COURT: Do you really want me to say  
8 that Namone was one of those people at the Beach Rose  
9 Social Club?

10 MR. ELLIS: Yes, sir. The way Stasi said  
11 it is the way I would like you to say it, that all  
12 kinds of people from the neighborhood went there and  
13 Namone was one of those. I would be delighted  
14 if you would read the sentence from Stasi's testimony.

15 For that purpose, your Honor --

16 THE COURT: Hold on. How about this:  
17 I should also have reminded you that the Beach Rose  
18 Social Club was a social club with card games and gambling  
19 going on in there and all kinds of people went  
20 there.

21 MR. ELLIS: From the neighborhood.

22 THE COURT: From the neighborhood.

23 MR. ELLIS: All kinds of people from the  
24 neighborhood went there. That is what Stasi said.

25 THE COURT: That is going too far.

2 MR. ELLIS: That is his testimony, your  
3 Honor. I don't know whether it is or not. I wasn't  
4 there. That is what he testified.

5 THE COURT: Yes, Mr. Phillips.

6 MR. PHILLIPS: Your Honor, I would object  
7 to any further reference to any evidence. I think  
8 your Honor has fairly and exhaustively summarized both  
9 the government's contentions and the defense contentions,  
10 pointing to hours of testimony that has been produced  
11 before this jury. Now, there has been approximately  
12 a two-hour break. I don't think that it would be  
13 fair to the government or to any individual defendant,  
14 for that matter, to pinpoint at this point any other  
15 specific evidence. I think your Honor has given  
16 the jury a fair summary of all the evidence that has  
17 been produced on both sides in this case.

18 MR. ELLIS: Your Honor, I most respectfully  
19 suggest that that can't be said unless there is at least  
20 some mention that Mamone went there to gamble. That  
21 is the cornerstone of his defense.

22 MR. PHILLIPS: Your Honor, there is no evi-  
23 dence that Mamone went there to gamble. Mamone did  
24 not take the witness stand and say he went there to  
25 gamble.

2 MR. ELLIS: Stasi said it.

3 THE COURT: All right.

4 MR. RICHMAN: Your Honor --

5 THE COURT: Yes, Mr. Richman. Your prob-  
6 lem is April, May or August.

7 MR. RICHMAN: It is a major problem, since  
8 our entire defense rests upon the fact that Mr. Tolopka  
9 did not see Mr. Barnaba in the month of August, and you  
10 just put the words in Mr. Tolopka's mouth that he did  
11 see him in August.

12 THE COURT: All right.

13 MR. RICHMAN: If it was my own recollection  
14 alone, your Honor, that would be one thing. Mr.  
15 Phillips made reference to it. At the time you made  
16 the error I turned to Mr. Warner and said, "Did you hear  
17 that?"

18 I said, "Yes, he thought you meant in August,"  
19 which is the major issue in the case. In fact,  
20 that's our entire defense.

21 MR. PHILLIPS: I think your Honor has  
22 instructed the jury on a number of occasions both during  
23 the trial and during your charge that it is the jury's  
24 recollection of the facts that counts.

25 THE COURT: Yes, I know.

2 MR. ROSENBERG: If your Honor please, with  
3 respect to marshaling the evidence, I wish to reaffirm  
4 once again that my defense was predicated upon the in-  
5 consistencies in the testimony and in the area that  
6 they are alleging that Butch Pugliese was involved in  
7 a narcotic conspiracy, and I think I have a right to rely  
8 upon my cross examination in that area, that the two  
9 people that say that he was involved in that area indi-  
10 cated that he had never received a dollar with respect  
11 to his alleged participation in a narcotic conspiracy.

12 Now, I relied upon my cross examination in  
13 that area and when the court marshaled the evidence it  
14 did not allude to that. I respectfully submit that  
15 this is our total defense, besides the presumption of  
16 innocence. But for the court to leave it out at  
17 this point, especially when you marshal the evidence,  
18 and say that with respect to my defense the testimony  
19 was clear in their mind because it was recent, you  
20 did not belabor that point --

21 THE COURT: You didn't want me to summarize  
22 the testimony of Mr. Curran and Mr. Phillips.

23 MR. ROSENBERG: No, that I don't object  
24 to, if your Honor please. But I think that I have a  
25 right to rely --

2 THE COURT: I understand.

3 MR. ROSENBERG: I have a right to rely  
4 upon the fact that Barnaba said that before these  
5 alleged introductions that Pugliese never received  
6 a dollar, and on my cross examination with respect  
7 to Pannirello the same situation existed, that he never  
8 received any money.

9 My summation was tailored that way and I  
10 think I have a right, when this court marshals the evi-  
11 dence and talks about what our defense was, that the cou-  
12 should at least allude to it.

13 MR. LOPEZ: Judge Duffy, just this last  
14 request regarding that stipulation that the government  
15 and the defendant DiNapoli agreed to regarding the dis-  
16 missal of the complaint before the United States magistr

17 THE COURT: All right. I am going to make  
18 some comments to the jury. If those comments do not  
19 include your request you are to consider that your  
20 request is denied and you have an exception.

21 Mr. Clerk, bring back the jury.

22 MR. WARNER: Your Honor, my request  
23 would not be mentioned by your Honor to the jury. It  
24 concerns overt act No. 7.

25 THE COURT: I know. That is denied.

2 (Jury present.)

3 THE COURT: Even though it is 9:14 I feel  
4 like saying good morning, ladies and gentlemen.5 I told you just before you left for dinner  
6 that there were certain things that had to be taken care  
7 of because I might have misspoken during the charge.8 I did I know in one part as to the law. Let  
9 me restate the thing and see if I can get it right this  
10 time.11 I was telling you that guilt is a personal thing,  
12 particularly where a conspiracy is concerned. You must  
13 consider each and every defendant separately. His parti-  
14 cipation in the conspiracy, if you find one did exist,  
15 must be established by the independent evidence of each  
16 defendant's own acts, statements and conduct.17 Do you understand? That defendant's acts,  
18 statements and conduct, and nothing else, to see if he  
19 was a member of the conspiracy. Now, as I said, guilt  
20 is personal, and it must be handled in that way.21 I tried to marshal the evidence starting late  
22 this morning, lasting on to this evening, and it has  
23 been pointed out to me and I perhaps a number of errors  
24 in marshaling the evidence. I can only emphasize to  
25 you again my marshaling of the evidence is not binding

2 upon you. If you think I am wrong, I am wrong. It  
3 is your recollection that controls.

4 If for some reason it is even questionable in  
5 your mind ask to have the testimony read back to you.  
6 It is your recollection that controls and you have a  
7 right to have any testimony read back to you, you have  
8 a right to see each and every exhibit.

9 Now, I indicated to you just before we closed  
10 for dinner that I was going to have prepared and I have  
11 had prepared a verdict sheet and also a copy of the  
12 indictment with the severed counts being excised, cut out  
13 of it completely.

14 At this point I am going to separate you.  
15 Those people sitting in the first 12 seats of the jury  
16 can start deliberations after they reach the jury room.  
17 The five alternates I am going to ask the marshal to bring  
18 to another room and the five alternates are to be kept  
19 separate from the 12 deliberating jurors. The marshal  
20 understands this. You may have to move your room  
21 tonight, but they are going to take care of that, get you  
22 in a place just as good.

23 I intend to keep you only until 10 o'clock  
24 tonight. You may just scratch the surface. We are  
25 coming back at 10 o'clock tomorrow morning.

2 I want you, please, to consider all the evi-  
3 dence. I want to reemphasize to you that my marshaling  
4 of the evidence is in no way binding upon you. It is  
5 your recollection that counts.

6 With that, would the marshal take out the  
7 first 12 jurors. Here are the verdict sheets and the  
8 excised copy of the indictment.

9 There is also included in this thing some  
10 pencils, a pad, envelopes and so on. If at any time  
11 you wish to communicate with me write out a note, stick  
12 it in an envelope, and ask the marshal to deliver it.  
13 I assure you I will take care of it promptly. I will  
14 be here in the building as long as you are here in the  
15 building.

16 MR. FISHER: Your Honor, may we approach?

17 THE COURT: Yes.

18 (At the side bar.)

19 MR. FISHER: If your Honor please, firstly,  
20 the alternates should be instructed, I submit, not to  
21 deliberate.

22 THE COURT: Oh, yes. I just wanted to get  
23 the 12 out first.

24 MR. FISHER: Right. The 12 jurors should  
25 be instructed not to deliberate unless and until they

2 are all together.

3 MR. PHILLIPS: I think the marshals should  
4 be sworn too, your Honor.

5 THE COURT: I understand. We are not  
6 even at that point yet.

7 MRS. ROSNER: Your Honor, I don't understand  
8 the point of keeping the five alternates. I cannot think  
9 of a situation where I would consent to have an alternate  
10 replace a juror if one were to be incapacitated for any  
11 reason.

12 THE COURT: I assume you object.

13 MRS. ROSNER: So why would the five be kept,  
14 Judge.

15 THE COURT: There is a reason.

16 MRS. ROSNER: Your Honor, may we see a copy  
17 of the verdict sheet and the indictment before they go  
18 into the jury room?

19 THE COURT: Yes, sure. The verdict sheet  
20 is simple. Each count is on a separate sheet, so  
21 that there will be no carryover whatsoever. The names  
22 are in the order of the indictment. You will  
23 see that on the first count there is guilty, not guilty,  
24 before and after, if guilty, before and after May 1,  
25 1971. You will find that there is no description of

2 any count on any piece of paper. That is not the way  
3 I think it is fair.

4 MR. LOPEZ: Right.

5 THE COURT: Now, the indictment. Basically  
6 what happened was a Xerox copy of the indictment was made.  
7 It was cut up. Unfortunately some of the Xerox papers  
8 came out blurred.

9 MR. FISHER: Your Honor --

10 THE COURT: You want to go through the indict-  
11 ment and make sure that the counts are still in.

12 MRS. ROSNER: Yes, let me just take a look  
13 at the counts.

14 MR. FISHER: While Mrs. Rosner is doing  
15 that, your Honor, may I state for the record my objection  
16 to the verdict sheet, the first page. I think the  
17 request for a special finding with regard to before or  
18 after May 1st is improper under the recent United States  
19 vs. Spock with regard to special verdicts, your Honor.

20 MR. ELLIS: Your Honor, I would also suggest  
21 that you have not --

22 MR. PHILLIPS: Can't we take this after the  
23 jury has been excused?

24 MR. ELLIS: No, I think we ought to get this  
25 clear on the verdict sheet. I don't think your Honor

2 adequately charged the standards by which they would  
3 determine when a defendant entered the conspiracy.

4 THE COURT: Oh, I think I did. I think  
5 I did.

6 MR. KING: Judge, is the indictment that  
7 Mrs. Posner is holding in her hand the one that is going  
8 in?

9 THE COURT: That is the one.

10 MR. KING: That is the old one, Judge.

11 MRS. ROSNER: It is not the old one. It  
12 is the superseding.

13 MR. KING: Is that the superseding, Judge?

14 THE COURT: Yes.

15 MR. KING: I am sorry.

16 MR. WARNER: Your Honor, may I make just  
17 one final point? I hate to be repetitious. I  
18 know how tired everyone is.

19 Frankly, your Honor's ruling on overt act No.  
20 7 is the only ruling that I cannot understand at all.  
21 I just wonder if your Honor was thinking of any specific  
22 testimony when it was put there.

23 THE COURT: I am not going to give specific  
24 reasons for my ruling on that.

25 MR. EPSTEIN: As long as we are here, I just

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2 take this opportunity to indicate that defendant  
3 Tramunti, pursuant to Rule 24(c) of the Federal Rules of  
4 Criminal Procedure, would take objection to the continued  
5 sequestration of the alternates. The rule is quite  
6 specific and requires that the alternates be released as  
7 soon as the jury begins its deliberation.

8 THE COURT: All right.

9 MR. EPSTEIN: Respectfully except, your Honor.

10 (In open court.)

11 THE COURT: All right, Mr. Clerk. Swear  
12 the marshals, please.

13 (Two marshals duly sworn.)

14 THE COURT: All right. Will the first  
15 12 jurors please leave. You will return to the jury  
16 room that you were in.

17 Please remember, don't deliberate unless  
18 all 12 of you are there. You can't do it any other way  
19 All 12.

20 All right. Go ahead, marshal, take them  
21 out.

22 (At 9:30 p.m. the jury retired to commence  
23 its deliberations.)

24 THE COURT: The other marshal will take the  
25 five alternate jurors, please. There is a room here

2 marked "Witness Room." You can use that right now.

3 Don't deliberate. I will be in in just a  
4 moment to make sure that you are comfortable and I will  
5 take care of things like that. Don't deliberate.

6 (The alternate jurors left the courtroom.)

7 THE COURT: I think I gave you all the  
8 ground rules for deliberation. We will break at 10  
9 o'clock tonight, we will start at 10 o'clock tomorrow.  
10 If there is any problem where we might go over to Sunday,  
11 we are going to start after the jury can go to church and  
12 services. I don't know right now what time that will  
13 be. I understand that at least one of the jurors  
14 has a habit of attending 11 o'clock church services.  
15 So that would indicate that you might get a chance to  
16 sleep late on Sunday morning.

17 MR. DOWD: Judge, I take it we all --

18 THE COURT: Everybody objects to the sequest  
19 tion of the extra jurors.

20 MR. DOWD: That's right.

21 THE COURT: All right. I think Mr.  
22 Epstein spelled out the reasons why that you object.  
23 I assume that you have other reasons also.

24 MR. WARNER: This is not an objection. It  
25 is an inquiry concerning what happens if the jury reaches

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2 verdicts as to some defendants during the course of the  
3 deliberations?

4 THE COURT: Let's worry about that some  
5 other time, not now.

6 MR. KING: Judge, what time do they convene  
7 tomorrow?

8 THE COURT: Ten o'clock, Mr. King.

9 MR. KING: And if Sunday?

10 THE COURT: If Sunday it will be some time  
11 after 12. I will make sure you get to church. You  
12 can pray for me.

13 MR. KING: I will pray for you.

14 MR. LEIGHTON: If we start 10 o'clock to-  
15 morrow morning how late will the jury be kept if it has  
16 to go over to Sunday, how late will you keep them to-  
17 morrow night?

18 THE COURT: Mr. Leighton, until I get as tired  
19 as I am right now.

20 MR. LEIGHTON: Thank you.

21 (In the robing room.)

22 MRS. ROSNER: Your Honor, when the jury was  
23 brought in for final instructions it was observed that  
24 Juror No. 7 was crying in open court.

25 MR. DOUD: She was. I observed it.

2 MRS. ROSNER: Counsel are seriously troubled  
3 by this, your Honor, and we think it would be appropriate  
4 to ask Juror No. 7 to come into chambers with one repre-  
5 sentative from the defense, one representative from the  
6 government, and inquire of her whether she wishes to  
7 disclose why she was crying.

8 MR. PANZER: Your Honor, I object.

9 MR. DOUD: I object.

10 MR. KING: I object too.

11 MR. DOUD: Your Honor, let me tell you  
12 what happened. As the discussion was going on at the  
13 side bar my client called me and I looked and he asked  
14 me to take a look at No. 7, which I did. She was  
15 turned over to the side. She had her head down.  
16 She was crying. I watched it while the discussion was  
17 going on.

18 I object to an inquiry.

19 MR. ROSENBAUM: I join in that objection,  
20 your Honor.

21 MR. KING: Mrs. Rosner has suggested that  
22 you ask her why she was crying. I think she is starting  
23 off with a premise that does not exist.

24 MRS. ROSNER: I did not say that, Mr. King.  
25 So that the record is clear, I think the jury

2 should be asked whether she wishes to disclose why she  
3 was crying, not why.

4 MR. KING: Why don't you ask her first  
5 whether she was crying.

6 MRS. ROSNER: All right.

7 THE COURT: We have objections and every-  
8 thing else.

9 MR. KING: I object.

10 MRS. ROSNER: I would say, your Honor,  
11 that the majority of defense counsel are in favor of  
12 having a voir dire, except for those who have objected.

13 MR. ROSENBLUM: Except I don't think it goes  
14 by majority. I think we have individual objections.

15 MR. DOWD: Numerically I would say that  
16 more defense counsel want the voir dire than not.

17 MR. LOPEZ: Yes.

18 MR. PHILLIPS: Nobody from the government  
19 observed this, your Honor. It is the first time that  
20 we have been informed that this did happen, if it did  
21 happen.

22 MR. LOPEZ: Then no harm would come, your  
23 Honor, for instance, if Mrs. Nancy Rosner were here with  
24 Mr. Phillips and your Honor inquired of Juror No. 7 if  
25 she was in fact disturbed by anything, if you could be

2 of any assistance or help, if she cared to discuss it  
3 with you, if there was anything relative to the case.  
4 It is not one of these massive assaults upon the juror.  
5 We don't want anything of the kind.

6 MR. KING: I want to add one more observa-  
7 tion, if I may. I think whatever the outcome is,  
8 it's going to place her in a very tenuous position with  
9 the other 11 jurors.

10 MR. DOWD: That is my objection.

11 MR. KING: I think it may upset the  
12 whole applecart.

13 MR. ROSENBAUM: Your Honor, may I make a sug-  
14 gestion. If the jury was asked generally if any one  
15 individually wanted to speak to his Honor, that I could  
16 understand. But I think by selecting one we may be  
17 emphasizing something which does not exist.

18 MR. DOWD: There is something I observed  
19 and I don't think I was mistaken at all. I can see  
20 with my own two eyes what was taking place. The atten-  
21 tion was drawn to the other side of the room.

22 THE COURT: All right.

23 MR. DOWD: I think I know what happened.

24 MR. PHILLIPS: I don't think, your Honor,  
25 that yet there is any basis for interfering with the jury'

2 deliberations.

3 THE COURT: I tend to agree with you.

4 The record should reflect that it is now 13 minutes before  
5 10. After a long and arduous day for both counsel for  
6 the defense, counsel for the government, and particularly  
7 the jury -- they have been attempting to absorb  
8 something under great stress, they are extremely tired --  
9 I think that by pulling a juror out now and examining her  
10 even alone would cause really added stress to the normal  
11 tensions that we find in the jury room, and under the  
12 circumstances I am denying the request.

13 MR. ELLIS: Your Honor, may I suggest then  
14 that we ask the jury to retire now for the evening,  
15 if they are so tired, as obviously they are. Perhaps  
16 there is not a lot of mileage to be gotten out of  
17 another 10 or 12 minutes.

18 MR. KING: I second that, Judge.

19 MR. ENGEL: I think for another 10 or 12  
20 minutes they might as well treat it normally.

21 THE COURT: My worry is whether I have  
22 transportation present for them. If I have transpor-  
23 tation present for them I will let them go now. If I  
24 don't, I know I am having transportation by at least 10  
25 o'clock and they are going to get out of here at 10

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2 o'clock promptly.

3 MR. FISHER: May the record reflect,  
4 your Honor, that I join in Mrs. Rosner's position.

5 MR. SUNDEN: May the record reflect that on  
6 behalf of Mr. Alonzo I join in it also.

7 THE COURT: I assume that those people that  
8 did not object join.

9 (Adjourned to March 9, 1974, at 10:00 a.m.)

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